Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

IN THE

# Supreme Court of the United States

RICHARD B. GOODIN
AKA RICK GOODIN & SON SEAFOOD
PETITIONER

VS.

CITY OF JACKSONVILLE,
JACKSONVILLE SHERIFF'S OFFICE "ET AL"
RESPONDENTS

On Petition For Writ of Certiorari
To The
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

## PETITION FOR WRIT OF CERTIORARI

RICHARD B. GOODIN
APPELLANT PRO SE
16195 SHELLCRACKER RD.
JACKSONVILLE, FLORIDA 32226
904-751-7594

128PGS

The following are the questions presented for review:

**Question No. 1**
Was Writ of Possession in Case No. 84-2137 SP, in and for Duval County, Florida, issued and executed in violation of Florida Rules of Court 1.550 Executions and Final Process" thus denying the right of "due process"?

**Question No. 2**
If evidence was misdirected to the wrong judge during the proceedings of Case No. 84-2 137 SP in and for Duval County, Florida, was this not a "mistake by the parties and the court" and a violation of Defendant's due process rights?

**Question No. 3**
Was Judge Henry Martin in error, denying Defendant Goodin's "Motion for Relief from Judgment", Case No. 85-13875-CA, Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, and based on the "newly discovered evidence" of the original Check No. 149, filed and attached to Docket No. 20, Case No. 3-92-394-Civil-J-JES (16), United States District Court, Middle District of Florida.

**Question No. 4**
Were Cases No. 3-89-233-Civ-J-20, United States District Court, Middle District of Florida, No. 92-394-Civ-J-JES(16), United States District Court, Middle District of Florida, No. 93-2171, in the United States Court of Appeals for the Eleventh Circuit, No. 3-94-706-Civ-J-20, United States District Court, Middle District of Florida, and No. 94-3471, 11th Circuit Court of Appeals, all dismissed for lack of subject matter jurisdiction?

**Question No. 5**
If the cases mentioned in Question No. 4 were all dismissed for lack of jurisdiction, is the order filed March 30, 2001, in Case No. 3:99-CV-656-J-21TJC, which acids a "state actor" and another defendant, in error, since no adjudication was made on the "merits of the cases"?

**Question No. 6**

Is original Check No. 149, filed and attached to docket No. 20, Case No. 3-92-394-Civil-J-JES(16), United States District Court, Middle District of Florida, a negotiated instrument pursuant to the Uniform Commercial Code?

**Question No. 7**

Was not Magistrate Timothy J. Corrigan in error in Case No. 3:99-CV-656-J-TJC, Hearing on Plaintiffs Motion for Hearing on Judgment by Default in not granting the default in accordance with Rule 12.(a)(1) of the Federal Rules of Civil Procedure and Rule 1.07(b) of the Middle District Court of the United States for the Middle District of Florida.

## List of Parties

The parties to those proceedings In which the court whose judgment is sought to be reviewed are as follows:

1. Case No. 84-2137 SP Div "J" County Court, Duval County, Florida, Docket #7 - Final Judgment filed May 22, 1984

   a - Robert L. Tuggle, Inc., Plaintiff
   vs. Richard B. Goodin, Defendant

2. Case No. 85-13875 CA, Circuit Court of Duval County
   a - See caption

3. Case No. 3:99-CV-656-J-21TJC, United States District Court, Middle District of Florida,
   Jacksonville Division
   a - See caption

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| Lugar v. Edmondson Oil Co. 457 US 922, 73 L Ed 2d 482, 102 S Ct 2744, Page 485, Paragraph 2 | 10 |
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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**Pursuant to Rule**

-1- Constitutional Amendment 14, Sec. 1

**AMENDMENT XIV-CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT**

**Section 1.** "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws."

-2- Title 42 United States Code Section 1983

**Sec. 1983. Civil action for deprivation of rights**

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

-3- Florida Rules of Court 1.550

**Rule 1.550. Executions and Final Process**

**(a) Issuance.** Executions on judgments shall issue during the life of

the judgment on the oral request of the party entitled to it or that party's attorney without praecipe. No execution or other final process shall issue until the judgment on which it is based has been recorded nor within the time for serving a motion for new trial or rehearing, and if a motion for a new trial or rehearing is timely served, until it is determined; provided execution or other final process may be issued on special order of the court at any time after judgment.

**(b) Stay.** The court before which an execution or other process based on a final judgment is returnable may stay such execution or other process and suspend proceedings thereon for good cause on motion and notice to all adverse parties.

-4- **Federal Rules of Civil Procedure**, 12(a)(1)(A) and 1.07(b) of the
United States District Court, Middle District of Florida, Local Rules.
**Rule 12.(a)(1) Defenses and Objections - When and How Presented - By Pleading or Motion - Motion for Judgment on the Pleadings**

**(a) When Presented. (1)** Unless a different time is prescribed in a statute of the United States, a defendant shall serve an answer (A) within 20 days after being served with the summons or complaint.

The following is the official and unofficial reports of opinions delivered in the case by other courts and administrative agencies.

Appendix A - Order Denying Petition for Rehearing
United States Court of Appeals for the 11th Circuit
Case No. 01-12376 - February 21, 2002
D. C. Docket No. 99-656-CV-J-21-TJC
Unpublished

Appendix B - Opinion - January 7, 2002
United States Court of Appeals for the 11th Circuit
Case No. 01-12376
D. C. Docket No. 99-00656-CV-J-21
Unpublished

Appendix C - Order - March 30, 2001
United States District Court, Middle District of
Florida, Jacksonville Division
Case No. 3-99-Civil-656-J-21TJC
Unpublished

Appendix D - Opinion
United States District Court, Middle District of
Florida, Jacksonville Division
Timothy J. Corrigan, United States Magistrate
Judge, Hearing on Plaintiffs Motion for
Judgment by Default - Case No.
3:99-CV-656-J-21C - February 3, 2000
Transcript of Hearing
See page 23, line 18- page 24, line 2
Unpublished

Appendix E - Opinion
United States Court of Appeals for the 11th Circuit
Case No. 94-3471 - June 30, 1995
D. C. Docket No. 94-706-Civ-J-20
Unpublished

Appendix F - Order of Dismissal
United States District Court, Middle District of
Florida, Jacksonville Division
Case No. 3-94-706-Civ-J-20 - October 24, 1994
Unpublished

Appendix G - Opinion
United States Court of Appeals for the 11th Circuit
Case No. 93-2171 - January 5, 1994
D. C. Docket No. 3-92-394-Civ-J-16
Unpublished

Appendix H - Order
United States District Court, Middle District of
Florida, Jacksonville Division
Case No. 92-394-Civ-J-JES(16) - January 27, 1993
Unpublished

Appendix I - Order
United States District Court, Middle District of
Florida, Jacksonville Division
Case No. 92-394-Civ-JES(16) - February 14, 1994
Unpublished

Appendix J - Order of Dismissal - July 19, 1989
United States District Court, Middle District of
Florida, Jacksonville Division
Case No. 3-89-233-Civil-J-20
Unpublished

Appendix K - Order Denying Rehearing
District Court of Appeal, First District, State of Florida
Case No. BQ-371 - October 29, 1987
Unpublished

Appendix L - Opinion - September 21, 1987
District Court of Appeal, First District, State of Florida
Case No. BQ-371
Unpublished

Appendix M - Jury Verdict and Final Judgment - July 16, 1986
Division H, Circuit Court, Fourth Judicial Circuit, In and For Duval County, Florida
Case No. 85-13875-CA
Unpublished

Appendix N - Order - September 17, 1985
County Court, in Duval County, Florida
Case No. 84-2137-SP
Denying Defendant's Motion for Relief from Final Judgment
Unpublished

Appendix 0 - Final Judgment - May 22, 1984
County Court, in Duval County, Florida
Case No. 84-2137-SP
Unpublished

Appendix P - Writ of Possession - May 24, 1984
See Appendix 0 - Judgment filed May 22, 1984
See Appendix W - Served May 25, 1984 and executed May 30, 1984

Appendix Q - Return of Service - Executed May 30, 1984
Issued May 25, 1984
See Appendix 0

Appendix R - Petition for Rehearing
United States Court of Appeals for the 11th Circuit
Case No. 01-12376-DD - January 26, 2002
Denied February 21, 2002 - See Appendix A
Unpublished

Appendix S(1) - Letter - October 9, 1991
To Federal Bureau of Investigation

Appendix S(2) - Letter - January 23, 1992
Reply from Federal Bureau of Investigation

Appendix T - Letter - July 12, 1991
From States Attorney, Harry Shorstein

Appendix U - Affidavit by forensic document examiner,
Don O. Quinn, attesting to the validity of Check No. 149, and
others for comparison purposes - January 21, 1991

Appendix V - Letter - December 5, 1989
Comptroller of the Currency
Administrator of National Banks
Response to my complaint from Patrick J. Marr

Appendix W - Notice of Filing - June 17, 1985
Regarding evidence of rent payments sent to wrong judge

Appendix X - Motion for Relief from Judgment - August 14, 1986
Presenting the "newly discovered evidence" of Check No. 149
which proved the rent payments to be current
See Appendix I

Appendix Y - Motion for Relief from Final Judgment - Filed May 13, 1985

Unpublished

Appendix Z - Petition for Judicial Action - Filed September 1, 1988

In the County Court, Duval County, Florida Case No. 84-2137-SP Div J

## JURISDICTION

**[x] For cases from federal courts:**

The date on which the United States Court of Appeals decided my case was January 7, 2002.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: February 21, 2002, and a copy of the order denying rehearing appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S. C. Sec. 1254(1).

Court of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgement or decree;

**[x] For cases from state courts:**

The date on which the highest state court decided my case was September 21, 1987. A copy of that decision appears at Appendix L.

[x] A timely petition for rehearing was thereafter denied on the following date: October 29, 1987, and a copy of the order denying rehearing appears at Appendix K.

The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257(a).

Sec. 1257. State courts; certiorari "(a) Final judgments or decrees rendered by the highest court of a State in which a decision would be had, may be reviewed by the Su

preme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

## STATEMENT OF THE CASE

(A) Regarding Question No. 1; Due to the failure of the Clerk of Court to follow the Florida Rules of Court Rule 1.550, and the Jacksonville Sheriff's Office to further execute the same it created a violation of Defendant/Appellant's due process rights under the Fourteenth Amendment of the Constitution. Section 1, Paragraph 3 "Nor shall any state deprive any person of life, liberty or property without due process of law."

Evelyn Rice v. Sioux City Memorial Park Cemetery, Inc., et al. (349 US 70, 99 L ed 897, 75 S Ct 614) Head notes: Constitutional law Section 520 - State action "Only if a state deprives a person or denies him enforcement of a right guaranteed by the Fourteenth Amendment can its protection be invoked."

The judgment was filed May 22, 1984. Writ of Possession was dated May 24, 1984, and execution of same on May 30, 1984 - only eight days after filing of judgment was a clear violation of due process as stated in Rule 1.550:

(Appendices O, P and Q)

Lugar v. Edmonson Oil Co. (457 US 922, 73 L Ed 2d 482, 102 5 Ct 2744, Page 485, Paragraph 2)

> "(1) The deprivation caused by the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state, or by a person for whom the state is responsible, and (2) the party charged with the deprivation be a person who may fairly be said to be a state actor."

Flagg Bros., Inc. v. Brooks (436 US 149, 56 L Ed 2d 185, 98 S Ct 1729, Page 188, Paragraph 5)

Civil Rights Sec. 12.5 - deprivation - elements of civil action
"4. A claim upon which relief may be granted to plaintiffs suing a defendant under 42 USCS sec. 1983, which provides a civil action for the deprivation of civil rights, must embody at least two elements: (1) the plaintiffs are first bound to show that they have been deprived of a right "secured by the Constitution and the laws of the United States, and (2) they must secondly show that the defendant deprived them of this right acting "under color of any statute" of the state; such two elements denote two separate areas of inquiry."

"No execution or other final process shall issue until the judgment on which it is based has been recorded nor within the time for serving a motion for new trial or rehearing is timely served (ten days). Case No. 84-2137 SP Duval County Florida.

(B) As to Question No. 2, Docket No. 28, Case No. 84-2137 SP, Duval County Florida, the document referred to in this notice of filing was evidence that would have cured the default, but was misdirected to the wrong judge by Defendant's Attorney, as evidenced by Defendant's Filing of Notice on June 17, 1985 ( see Appendix W).

(C) As to Question No. 3, the "newly discovered evidence" of the original Check No. 149 showing the "Pay Any Bank" stamp on the back, and no markings anywhere indicating that check was returned for any reason, was never even seen by Judge Martin, who refused to even pick It up or even acknowledge its existence during Case No. 85-13875 CA. Instead, he relied on illegible copies by the bank, and their perjured testimony and "doctored" documents, which were not "best evidence" to deny relief from judgment, thus upholding the wrongful eviction.

(D) As to Questions No. 4 and 5, the cases referred to were all dismissed due to subject matter jurisdiction, and not adjudicated

on the merits. I was a litigant pro se because I could not get an attorney to take the case. Every time I had an attorney that made a valid point, he would find himself with "other things to do". I paid a myriad of attorneys a considerable amount of money to look over my case and all were enthusiastic at first, but suddenly became "unable to pursue my interests". I am not an educated man, but have laboriously and painstakingly argued my position to the best of my ability. I was inept in the finer points of the law, regarding jurisdiction, state actors, etc., nonetheless, my right of due process has been violated.

(Appendices E, F, G, I and J)

"Without the benefit of a statement of deficiencies, the pro se litigant will likely repeat previous errors." Parviz Karim-Panahi, Plaintiff-Appellant v. Los Angeles Police Department; et al, No. 86-6198 United States Court of Appeals, Ninth Circuit. 839 Federal Reporter, 2d Series, Pg. 624.

The cases referred to were not judged on merit as Judge Nimmons, Jr., (Appendix C ) states, nor is the present action the same as those previously tried, as covered in Question No. 5.

Regarding Question No. 6, the original Check 149 is a "negotiated instrument" according to the Uniform Commercial Code. Refer to Affidavit by Forensic Don O. Quinn (Appendix U).

In Question No. 7, Magistrate Timothy J. Corrigan did not grant Plaintiff-Appellant's Motion for Judgement by Default although Defendant-Appellee failed to answer timely and, again, ignored Magistrate Corrigan's order to file a timely response. Magistrate Corrigan stated that he would decide the case on its merits, however, he decided the case, not on the evidence, but on the pleadings by Defendant (Appendix D).

## Reasons for Granting the Petition

"Asserted denial of due process of law is to be tested by an appraisal of the totality of facts in a given case." Betts v. Brady, 1942, 62 S Ct 1252, 316 U.S. 455, 86 L Ed 1595.

A United States Court of Appeals has entered a decision or decided an important question in a way that has "so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory powers". Supreme Court Rule 10, Considerations Governing Review on Certiorari.

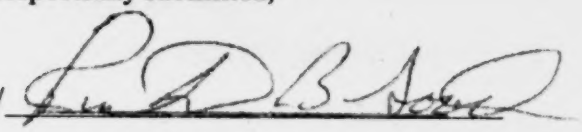
In Defendant's Motion for Relief from Final Judgment, filed May 13, 1985, Defendant's attorney, Marshall W. Liptak, refers to the "mistake of the parties and the Court", the "newly discovered evidence" and Plaintiff's "misconduct" in conspiring with a third party for rental of the same premises even though no default had occurred (Appendix Y).

All these inconsistencies in the case were covered in Defendant/ Appellant's Petition for Judicial Action filed September 1, 1988, Case No. 84-2137 SP Div J, in the County Court, Duval County, Florida, (Appendix Z) and also made part of Plaintiff/Appellant's Amended Complaint 3-99-656-CV-J-TJC, filed February 25, 2000.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

s/ 

Date: May 17, 2002

**APPENDIX A**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

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No. O1-12376-DD

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RICHARD B. GOODIN Plaintiff-Appellant,

versus

CITY OF JACKSONVILLE,
JACKSONVILLE SHERIFF'S OFFICE,
SUN TRUST, N.A.,
f.k.a. Sun Bank North Florida,
f.k.a. Flagship Bank of Jacksonville,
f.k.a. Flagship State Bank of Jacksonville

Defendants-Appellees.

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On Appeal from the United States District Court for the
Middle District of Florida

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BEFORE: TJOFLAT, BIRCH and WILSON, Circuit Judges.
PER CURIAM:

The petition(s) for rehearing filed by Appellant Richard B. Goodin is DENIED

ENTERED FOR THE COURT:

S/ _____
UNITED STATES CIRCUIT JUDGE
ORD-41

**APPENDIX B**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

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No. 01-12375
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JAN 07 2002
THOMAS K. KAHN
CLERK

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D.C. Docket No. 99-00656-CV-J-21

RICHARD B. GOODIN, Plaintiff-Appellant,

versus

CITY OF JACKSONVILLE,
JACKSONVILLE SHERIFF'S OFFICE,
SUNTRUST, N.A.
f.k.a. Sun Bank North Florida
f.k.a. Flagship Bank of Jacksonville,
f.k.a. Flagship State Bank of Jacksonville,
Defendants - Appellees.

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Appeal from the United States District Court
for the Middle District of Florida

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January 7, 2002

Before TJOFLAT, BIRCH and WILSON, Circuit Judges.

PER CURIAM:

Richard B. Goodin appeals the district court's dismissal of his pro se civil-rights suit, brought under 42 U.S.C. § 1983, against SunTrust Bank, N.A. (SunTrust). City of Jacksonville (City), and the Jacksonville Sheriff's Office (JSO). Goodin argues that the district court erred when it precluded Goodin from filing a claim that was based on the same set of circumstances as cases previously filed. Goodin asserts that SunTrust cannot claim a res judicata defense, since the previous cases were not adjudicated on the merits, but dismissed for jurisdictional reasons.

Goodin also argues that his Fourteenth Amendment right of due process was violated by the City and the JSO when he was evicted from his place of business in May of 1984, and therefore, the district court erred when it granted defendants' motions to dismiss. Goodin asserts that the statute of limitations is tolled because the case involves new defendants, and SunTrust continues to conceal facts.

Res judicata is a legal determination which this Court reviews de novo, *Jang v. United Techs. Corp.*, 206 F.3d 1147, 1149 (11th Cir. 2000). "[R]es judicata, or claim preclusion, bars the filing of claims which were raised or could have been raised in an earlier proceeding." *Citibank, N.A. v. Data Lease Fin, Corp.* 904 F.2d 1498, 1501 (11th Cir. 1990). Claim preclusion bars a subsequent lawsuit when four elements are present: "(1) there must be a final judgment on the merits, (2) the decision must be rendered by a court of competent jurisdiction, (3) the parties, or those in privity with them, must he identical in both suits, (4) the same cause of action must be involved in both cases." *Id.* The dismissal of a complaint with prejudice satisfies the requirement that there must be a final judgment on the merits. *Id.* "The phrases 'with prejudice' and 'on the merits' are synonymous terms, both of which invoke the doctrine of claim preclusion." *Id.*

We review de novo the dismissal of a complaint for failure to satisfy the applicable statute of limitations, taking as true all factual allegations contained in the complaint. *Byrd v. MacPapers, Inc.*, 961 F.2d 157, 159 (11th Cir. 1992). The Supreme Court has directed that the state-statute of limitation period applicable to personal injury actions should be applied to all actions brought pursuant to § 1983. *Wilson v. Garcia,* 471 U.S. 261, 279--80 (1985). In accord with *Wilson,* this Court held that the Florida four-year personal injury limitations peroid, found in Fla. Stat. Ann. § 95.11(3), applies to § 1983 actions. *Burton v. City of Belle Glade,* 178 F.3d 1175, 1188 (11th Cir. 1999). The statute of limitations begins to run when the particular cause of action accrues. *Kelly v. Serna,* 87 F.3d 1235, 1238 (11th Cir. 1996). In determining when a cause of action accrues, this Court applies a "discovery rule" by determining when the plaintiff kew or should have know of his injury and its cause. *See Bowling v. Founders Title Co.,* 773 F.2d 1175, 1178 (11th Cir. 1985).

Upon review of the record, and upon consideration of the briefs of the parties, we find no reversible error.

The record reflects that Goodin's most recent prior federal action against SunTrust was dismissed with prejudice in September of 1994. This is identical to an adjudication on the merits, and therefore satisfies the first element of claim preclusion. *Citibank,* 904 F.2d at 1501. Goodin's instant claim is against the same party, arises out of precisely the same facts, and raises the same cause of action pursuan to section 1983. The district court correctly found that the instant claim against SunTrust is barred by res judicata.

It is equally clear that Goodin's claims against JSO and the City are barred by the applicable statute of limitations. Goodin did not file his § 1983 claim against these parties until 1999, fifteen years after his 1984 eviction. Goodin kew that JSO officers were the ones that conducted the eviction; he presents no evidence that SunTrust

or anyone else concealed this fact from him. There is nothing in the record that would suggest that the applicable statute of limitations should be tolled in the instant case.

Therefore, the district court did not err in dismissing Goodin's claims.

**AFFIRMED.**

**APPENDIX C**

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**JACKSONVILLE DIVISION**

RICHARD B. GOODIN, Plaintiff,

V. CASE NO. 3:99-cv-656-J-21TJC

JACKSONVILLE SHERIFF'S OFFICE.
City of Jacksonville, SUN TRUST, N.A. Defendants.

FILED

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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

ORDER

This cause comes before the Court on Defendant Sun Trust's Motion to Take Judicial Notice of Adjudicative' Facts in Prior Cases (Dkt. 15) Defendant Sun Trust's Motion to Dismiss for Failure to State a Claim, in the Alternative, for Summary Judgment, and for Rule 11 Sanctions (Dkt. 33), Plaintiffs response (Dkt. 35) in opposition, Defendant City of Jacksonville, Jacksonville Sheriffs Office's Motion to Dismiss Plaintiffs Amended Complaint (Dkt. 34), and Plaintiff response (Dkt. 36) in opposition thereto.

The Court will grant Defendant Sun Trust's Motion to Take Judicial Notice of Adjudicative Facts in Prior Cases (Dkt. 15) and judicially notice three cases filed in the Middle District of Florida. Jacksonville Division: 3:89-cv-233-J-l2: 3:92-cv-394-J-16B; 3:94-cv-706-J-20B and two cases filed in the Fourth Judicial District of Florida, in and for Duval County: 85-13875-CA; 90-14468-CA. The Court notes that these cases are incorporated by reference into the Plaintiff's Complaint (Dkt. 1) and Amended Complaint (Dkt.

32). Pleadings from 3:89-cv-233-J-12 and 3:94-cv-706-J-20B are attached to this order as Exhibit A.

Upon review of the above filed papers and the case files of the five cases previously filed by this Plaintiff, the Court concludes that Defendant's motions to dismiss and, alternatively, for summary judgment are due to be granted. The Court notes that the Honorable Harvey E. Schlesigner, District Judge, imposed Rule 11 sanctions against Plaintiff (3:94-cv-706-J-20B, Dkt. 12) in the form of ordering the Plaintiff to refrain from filing additional claims in this case.

The Court cannot allow a person to repeatedly file the same suit based on the same facts after final judgement has been entered in favor of the Defendants. Plaintiff's continued filing of his suites violates Rule 11, Federal Rules of Civil Procedure. Pursuant to Rule 11, each person who signs a pleading and files it with the Court is certifying that the pleading is not presented for any improper purposes - such as to harass - and that claims in the pleadings are warranted by existing law and are not frivolous. Since judgement was entered in favor of the Defendants based on the same facts and same legal contentions at least five times previous to the filing of the instant suit, Plaintiff cannot certify that his claims are warranted by existing law or are nonfrivolous. Plaintiff has had ample notice that repeatedly filing new suits based on the same facts and contentions violates Rule 11.

The Court also notes that Defendant SunTrust's motion for sanctions (Dkt. 33) does not comply with the procedural requirements of Rule 11(c)(1)(A). Therefore, the Court will not impose a monetary sanction at this time. Plaintiff is admonished, however, that the filing of another complaint based on the same facts and legal contentions as the instant case will violate Rule 11.

The Court will grant the Defendants' motions to dismiss. The Court will also order Plaintiff to cease filing complaints based on the same facts and legal claims as the instant suit. Since the Plaintiff has

been previously admonished by Judge Schlesigner to refrain from filing further suits but nevertheless filed an identical suit again, the Court finds that it must do more than merely admonish the Plaintiff. Therefore, to enforce this order, the Court will further direct the Clerk of Court not to accept for filing a complaint by Richard B. Goodin until it is reviewed by a Magistrate Judge for compliance with this order.

Upon consideration of the foregoing, it is here by **ORDERED:**

1. Defendant Sun Trust's Motion to Take Judicial Notice of Adjudicative Facts in Pior Cases (Dkt. 15) is **GRANTED.** The Court takes judicial notice of three cases filed in the Middle District of Florida, Jacksonville Division: 3:89-cv-233-J-12; 3:92-cv-394-J-16B; 3:94-cv-706-J-20B and two cases were filed in the Fourth Judicial District of Florida, in and for Duval County: 85-13875-CA; 90-14468-CA.

2. Defendant Sun Trust's Motion to Dismiss for Failure to State a Claim, in the Alternative, for Summary Judgment, and for Rule 11 Sanctions (Dkt. 33) is **GRANTED.**

3. Defendant City of Jacksonville, Jacksonville Sheriff's Office's Motion to Dismiss Plaintiff's Amended Complaint (Dkt. 34) is **GRANTED.**

4. The Amended Complaint (Dkt. 32) is **DIMISSED with prejudice.**

5. Plaintiff is Ordered to cease filing complaints based on the same facts and legal claims as the instant suit.

6. The Clerk is **DIRECTED** not to accept for filing a complaint by Richard B. Goodin until it is reviewed by a Magistrate Judge for compliance with this order.

7. The Clerk is DIRECTED to attach of copy of the State files numbered 85-13875-CA and 90-14468-CA to Dkt. 15, in lieu of the State court orignals proved to the Court. The Clerk is further **DIRECTED** to return the original State court files to the Fourth Judicial Circuit of Florida, in and for Duval County.

8. All other pending motions are **DENIED as moot.** The Clerk is **DIRECTED** to close the case.

**DONE AND ORDERED**, at Jacksonville, Florida this 30th day of March, 2001.

s/ Ralph W. Nimmons, Jr.
RALPH W. NIMMONS, JR.
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of record
Pro se party
Courtroom Deputy Clerk
Judicial Assistant
Law Clerk

**APPENDIX D**

**IN THE UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**JACKSONVILLE DIVISION**

RICHARD B. GOODIN,
Plaintiff,
vs.
CITY OF JACKSONVILLE
JACKSONVILLE SHERIFF'S
OFFICE and SUN TRUST, N.A.,
Defendants.

Jacksonville, Florida
Case No. 3:99-cv-656-J-21C
February 3, 2000
10:00 a.m.
Courtroom No. 5

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HEARING ON PLAINTIFF'S MOTION FOR HEARING ON JUDGEMENT BY DEFAULT BEFORE THE HONORABLE TIMOTHY J. CORRIGAN UNITED STATES MAGISTRATE JUDGE

RICHARD B. GOODIN, Pro se
16026 Shark Road West
Jacksonville, Florida 32226

DEFENSE COUNSEL, SUN TRUST:

W. DAVID VAUGHN, ESQUIRE
and
CALVIN E. HAYDEN, ESQUIRE
Hayden, Facciolo & Millsaps, P.A.
200 West Forsyth Street, Suite 1330
Jacksonville, Florida 32202

DEFENSE COUNSEL CITY OF JACKSONVILLE:

VIRGINIA B. NORTON, ESQUIRE
Office of General Counsel
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

COURT REPORTER: Robin H. Owens, RPR

Also Present: Barbara Lawley

(Proceedings reported by microprocessor stenography; transcript produced by computer.)

**EXHIBITS RECEIVED**


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| Plaintiff's Exhibits 1 through 3 | 22 |

**PROCEEDINGS**

10:15 a.m. February 3, 2000

THE COURT: Good morning. I apologize for the delay this morning. We had a little mix-up.

We're on the record in Goodin versus City of Jacksonville and Sun Trust, N.A., in Case No. 99-656-Civ-J-21C. By the way, a lot of folks are putting 21L. I don't know where the "L" is coming from but it's 21C. The "C" designation is me. "L" means nothing to the clerk, so I'll appreciate everybody amending their case numbering because they don't know what to do with it when it comes in.

You're Mr. Goodin, sir?

MR. GOODIN: Yes, sir.

THE COURT: And you're Ms. Lawley, you're just accompanying Mr. Goodin?

MS. LAWLEY: Yes, sir.

THE COURT: All right. And you're proceeding pro se, Mr. Goodin?

MR. GOODIN: Yes, sir, I am.

THE COURT: All right. Mr. Vaughn and Mr. Hayden are representing defendant Sun Trust, and I recognize that there's a question about how you ought to be identified. What's the proper name of your client, Mr. Vaughn?

MR. VAUGHN: Sun Trust Bank, North Florida, N.A.

THE COURT: All right. Ms. Norton, you're here on behalf of the defendant, City of Jacksonville?

MS. NORTON: Yes, Your Honor.

THE COURT: All right. I thought it would be good to have a hearing today on this Motion for Default because it's been a source of controversy, and then we have all kinds of problems with people not getting notice of things. And I just thought we needed to get that resolved.

And, also, we need to go ahead and get status resolved. There's no case management report on file yet. I need to find out from Mr. Goodin what this suit is really about because it's not exactly clear to me.

Let me go ahead, before we talk about status and where we're going to go, let's go ahead and work on this Motion for Default for a minute. Mr. Vaughn, are you going to do the talking or Mr. Hayden?

MR. VAUGHN: I will, Your Honor, Mr. Vaughn.

THE COURT: All right. Obviously, there was service of process on somebody down in Orlando and who was that and which company was served and why was that not proper service in the case? That's what was troubling me a little bit to figure out.

It appeared that there was service on somebody but that nobody really did anything about that service — and maybe that's wrong. I saw a letter that I hadn't seen before, I guess, where somebody had written to Mr. Goodin. But can you tell me what happened here?

MR. VAUGHN: Yes, Your Honor.

By way of background, we filed an affidavit yesterday and served it on Mr. Goodin. I believe that you have it.

THE COURT: Mr. Farris.

MR. VAUGHN: Yes, Your Honor.

THE COURT: I saw that, and that attached a letter that I had not seen before that — where Mr. Farris had written Mr. Goodin and — okay. So I got that. But tell me —

MR. VAUGHN: Okay. Basically what the affidavit establishes is that that return of service that's attached to the affidavit, Exhibit A, was not received by Kelton W. Farris, who is associated general counsel for Sun Trust Bank Central Florida, N.A. He states that he did not receive this summons.

THE COURT: Well, who did?

MR. VAUGHN: We don't have any idea and that would be one of the grounds why we would challenge Mr. Goodin's service is because there has been a failure by the process server to comply with the Florida statute governing service on corporations in the state of Florida.

Under the Federal Rules, to effect service in the state of Florida on a corporation, you must comply with the state statute governing service. In this case, what we have is a return of service stating that the — I'm looking at page two of the return of service —— that the name of the server in that box it has — appears to be Kelton W. Farris. I imagine what happened here is the process server actually put his name in the wrong space to begin with. I would assume that the name of the server would actually be the gentleman who tried to attempt service.

If he didn't serve Mr. Farris -- and according to the affidavit, he did not -- that would indicate that the process server must have simply left this summons with someone in Sun Trust Bank, Central Florida's general counsel office.

The statute requires that if a process server cannot locate the president or vice president or any of the other hierarchy of officers that can be served under the statute in order to effect service on a corporation, then the process server is supposed to file an affidavit explaining the absence of the superior officers. In the absence of the filing of an affidavit, effective service is not achieved against a corporation.

Your Honor, we filed responses to Mr. Goodin's motion and cited a number of cases. And they all make clear one thing, that the thrust of all this law is there must be notice to the corporation. Otherwise, the process server could simply walk into a branch office of a corporation and leave a summons with clerical personnel and walk back out and file a return of service and the corporation effectively is not served but, you know, facially the process server is claiming that he served somebody.

That's why the Space Coast case that I referred to in our supplemental memorandum of law that the process server must file an affidavit explaining why he has served an inferior officer, rather than the first person in the hierarchy as provided by the statute.

THE COURT: Tell me this — and I'm going to ask Mr. Goodin in a moment. But without any comment upon the merits of the lawsuit against the Sun Trust entity, who would — if there was going to be a lawsuit against the Sun Trust entity in this case, who would be the — what's the proper name of the defendant that should be served and be a defendant in this case?

MR. VAUGHN: Your question is to me, Your Honor?

THE COURT: Yeah.

MR. VAUGHN: Okay. We filed a response on behalf of Sun Trust Bank North Florida, N.A., and we filed on behalf of that entity after we retrieved the various cases that Mr. Goodin referred to in his complaint. In the body of his complaint, he makes no allegations at all against Sun Trust.

THE COURT: I understand that.

MR. VAUGHN: Right. So what we had to do is, we had to go and retrieve those four cases he filed. And in the course of reviewing those cases, we were able to determine the cause of action dates back to a case that was tried in 1984 by a predecessor entity of Sun Trust Bank North Florida, which happened to be Sun Bank.

Now, Mr. Hayden is with me today, not by coincidence. He actually tried that case against Mr. Goodin who had counsel. It was a jury trial in which Sun Trust prevailed.

Now, I would like to point out something that — I know we're here on a motion, Mr. Goodin's Motion to Dismiss, but I don't think it's an accident that he has not alleged anything against —

THE COURT: You're here on a Motion to Default.

MR. VAUGHN: I'm sorry, Motion to Default. I don't think it's an accident that there are no allegations against Sun Trust in any corporate format in that complaint because the last case that Mr. Goodin refers to in his complaint that is presently before the Court is a Jacksonville Division, Middle District case, No. 94—Civ—706.

And in that case, Mr. Goodin's cause of action was dismissed with prejudice, and the U.S. magistrate in his ruling admonished him from ever filing a cause of action arising from these events against Sun Trust Bank. And if he did so again, the Court would impose Rule 11 sanctions against him.

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I raise that today because we've been in the case for five months and I've been aware since we filed our first response to this, Your Honor, that, in fact, he is basically under this order that if he filed this cause of action again, a Rule 11 sanction can be imposed. And the Court can do this on its own initiative.

I realize Mr. Goodin probably feels he's suffered a grave misjustice (sic) but, historically, the federal and state courts have a time honored tradition of giving pro se plaintiffs some leniency when applying the rules of civil procedure.

But I would submit to you at this time that the Court should take judicial notice of the rulings that have been made prior to today in the Jacksonville Division concerning this cause of action which he has brought up again for the — going on five times now.

THE COURT: All right. I'll — we'll talk about that in a minute. Let me hear from Mr. Goodin just strictly on the default issue.

Mr. Goodin, what's your response to Mr. Vaughn's statements that there was improper service to begin with and that, very likely, the wrong entity was served, if anybody was served. What is your response to that, sir?

MR. GOODIN: Your Honor, could I address the affidavit that the defendant filed yesterday?

THE COURT: Yes, sir. That would be fine.

MR. GOODIN: Under local rules, Middle District local rules, Rule 3.01(3), each party opposing any written motion or other application shall file and serve within ten days after being served with such a motion or application, a brief or legal memorandum with citation of authority in opposition to the relief requested.

No other briefs or legal memorandum directed to any such written motion shall by filed or served by any party unless requested by the Court.

This was filed yesterday, Your Honor.

THE COURT: All right. I understand.

MR. GOODIN: This is something else that is a little late.

THE COURT: I understand the argument. What's your other argument?

MR. GOODIN: The other is the order by Magistrate Steele dismissing the case with prejudice. This order was appealed to the Eleventh Circuit Court of Appeals in Atlanta and remanded to be dismissed for jurisdictional purposes.

And the other —

THE COURT: Okay. And I'm not really on that order by Judge Steele at the moment. What I'm asking you is — I understand your argument that the affidavit was filed too late. It's an argument that I need to consider.

But I'm also asking you to address whether you think there was proper service originally in July when you had this defendant

served and, if you do think there was proper service, why you think it was proper.

MR. GOODIN: Your Honor, over the past 15 years, we've been in and out of court, approximately four times here in federal court. Each time, the respondent has been Sun Bank Orlando. Okay. They have responded. They have accepted service of process. They are the entity in Orlando that accepts process. It has, like I said, been in the past that way.

And what they're doing today is basically the tricks they've pulled in the past, okay.

Do you mind if I stand, sir?

THE COURT: No Sir.

MR. GOODIN: Attached to the -- not attached but made part of the record are Polks manuals, pages of Polks manual, which shows who accepts the process of service. I believe you've got it there in the file. It was filed.

And that would be Sun Bank Orlando. On — Your Honor, this is on my motion, so may I just go through the motions? I'm getting a little off of the course here.

THE COURT: Okay. Let me see. I know everybody seems like they have a lot they want to say. But what I'm trying to do first is decide this Motion for Default. And I'm asking you specifically. You did file a Motion for Default which says that they failed to respond within the 20 days after they were properly served.

Mr. Vaughn says they weren't properly served, and he's given me some reasons why they weren't. He says that it was the wrong company but he also says that Mr. Farris said that even though the service of process indicates that Mr. Farris was served and, in fact, Mr. Farris is now swearing he wasn't served. And if he wasn't served, it's not clear who was.

So I need you to – if you have a reason for telling me

that there was proper service on the defendant at that time, I need to hear from you about that specific point so that I can rule on the Motion for Default. And then we can go on to these other matters.

MR. GOODIN: Yes, sir. There was proper service made on the defendant. I'm trying to — I have a letter here.

THE COURT: While he's looking for that, Mr. Vaughn, I'm looking at the return of service and it's signed by the process server down at the bottom. And it's also stamped by Kevin Roundtree on the front as the certified process server.

I can't really read the signature of the server, but it looks like it's a "K," so I'm assuming that it's Mr. Roundtree who signed this declaration of the server. And it appears to me that different handwriting is under the return saying that Mr. Farris was the one that — associate general counsel was the one that received it.

Are you — the import of Mr. Farris' affidavit is that he did not, in fact, accept service at that time and that either it's not his signature or he didn't know anything about it on July the 9th; is that what he's saying?

MR. VAUGHN: Your Honor, yeah, I think that's the inference that can be drawn. Also there's an Exhibit B attached to the affidavit.

THE COURT: Where he says he doesn't have a copy of the complaint?

MR. VAUGHN: Yes. On August 27th, I might add. I've looked at his signature. I'm not a forgery expert but it's you know, what we can make of that copy, we have a copy of the letter, it's not even close to what appears to be the name of the server, and he states that that is not his signature in the affidavit.

I might also add that under the federal rules, this letter of August 27th, 1999, basically placed Mr. Goodin on notice, one, that his service was defective and, two, that Sun Trust Bank of

either North Florida or Central Florida was prepared to file a response to the complaint.

THE COURT: All right.

MR. VAUGHN: And in effect, that Motion for Default would not be appropriate at that point whenever the plaintiff has been advised that the target of the complaint, the defendant has not received a copy of the complaint.

THE COURT: What event cased Sun Trust defendant to file a motion to dismiss? I think it was on or about December 21st? You know, nothing had been filed and then that was filed.

What event caused Sun Trust to decide they were going to file a Motion to Dismiss at that time?

MR. VAUGHN: Mr. Farris had contacted our firm and asked us to retrieve a copy of the complaint from either the federal courthouse clerk's office or from the general counsel's office, which we did obtain.

And by the time we had gotten into the case, we noted that the general counsel's office had filed what we thought was a very effective defense that the statute of limitations had run on the cause of action.

So at that stage in hopes of concluding this litigation as inexpensively and quickly as possible, we simply joined in with the defense offered by the general counsel's office.

I might add one other point, Your Honor, is that Mr. Goodin-

THE COURT: At that time that motion was filed, that September 21st motion, were you aware or was Mr. Farris aware of the July service or not? In other words, when did y'all first become aware of that July service?

MR. VAUGHN: We didn't — it was at the time that I tried to retrieve the complaint, Your Honor. I think that was the first time I saw the service of process.

One other thing I would add — and I think this is very pertinent — is that on September 7th, Mr. Goodin filed an affidavit with the Court. It's a one-page document.

THE COURT: September 7th?

MR. VAUGHN: Yes, Your Honor.

THE COURT: All right.

MR. VAUGHN: It's a one-page document. He served it on the 7th. I'm not sure what the filing date is. It doesn't appear.

THE COURT: All right, sir. Go ahead.

MR. VAUGHN: The affidavit states, I, Richard B. Goodin do hereby state because of the concealment perpetrated —— perpetuated by Sun Trust N.A., formerly known as Sun Bank N.A., the wrongful eviction was upheld and I lost my business and assets plus costs in an attempt to recover in excess of $50,000.

We would submit

THE COURT: You're going to have to do that a little slower, sir.

MR. VAUGHN: My apologies. I'm sorry. My wife gets on to me all the time.

THE COURT: If you're going to recite the affidavit, do it a little more slowly.

MR. VAUGHN: Basically, he states that because of the actions of Sun Trust N.A., formerly known as Sun Bank N.A., the wrongful eviction was upheld and I lost my business and assets plus costs of my attempts to recover in excess of $50,000.

THE COURT: Just for the record, that's Document 8 in our file. Go ahead, sir.

MR. VAUGHN: Mr. Goodin labels this as an affidavit, but we would submit to the Court that this is actually an amendment to his complaint because he's stating in the most elementary terms the cause of action, also damages. Neither of those elements were in the original complaint.

He's filing this on September 7th. Now, if he's amending his complaint without leave of court, under the rules, we would have another 20 days to respond to that. In fact, we did.

We filed a Motion to Dismiss on September 21st. So, within 14 days of the amendment to his complaint, we had filed a timely response.

THE COURT: All right, sir.

Mr. Goodin, I'm returning to you now, sir, and giving you one last opportunity to discuss the Motion for Default before I make a ruling. And the questions I had for you is upon what basis are you asserting that the proper defendant was properly served in July of 1999, as you have alleged in your motion?

MR. GOODIN: Sir, I can only go by the return of the summons. And if I may...

THE COURT: Yes, sir, hand that up, if you'd like to.

MR. GOODIN: Here's a letter. Upon serving the notice of default, this letter right here, the original letter, is — the attorney, Mr. Hearn, who handled the case, which the defendant —

counsel for the defendant was talking about, 706, that was the last attorney.

In that letter, it states that he is the attorney of record. He will be accepting process. You've got the letter, I haven't got it in front of me. About all I've got is that letter there and the return of the summons.

THE COURT: All right, sir.

MR. VAUGHN: Your Honor, could we see a copy of the letter? I don't believe we have it.

THE COURT: Sure. Just give him the originals.

THE CLERK: Hand it back to him, please.

MR. HAYDEN: Your Honor, if I may comment.

THE COURT: Yes.

MR. HAYDEN: What Mr. Goodin has furnished is a letter dated August 23rd, 1994, directed to him signed by Mr. Joseph G. Hearn, Jr. For the record, Mr. Hearn is no longer employed by the Sun Trust Bank.

Approximately two years ago, he accepted a position with the District Court of Appeals, First District in Tallahassee as their mediator.

THE COURT: All right, sir.

MR. GOODIN: Your Honor, if I may, Mr. Vaughn brought it up, the file 706. And Mr. Hayden says that Mr. Hearn has left, I believe, was it some years ago? The Polks manual shows that Mr. Hearn, the last thing filed — last thing from Polks manual, shows

Mr. Kelton M. Farris as associate general counsel and Joseph Hearn, which is made parts of the file.

THE COURT: All right, sir.

MR. GOODIN: Your Honor, may I submit this? It might be a little bit easier.

THE COURT: Why don't you show it to Mr. Vaughn.

THE CLERK: Mr. Goodin, show it to Mr. Vaughn.

THE COURT: All right. I'm going to make the three documents Mr. Good in submitted Exhibits 1, 2 and 3 to this hearing, and I'm permitting Mr. Goodin to file those documents today, even though the time for response is filed.

I'm also going to permit the filing of the affidavit of Mr. Farris. I think it's – although the local rules certainly do contemplate that matters will be filed on the schedule contemplated by the rules, I had set this matter for hearing. It doesn't surprise me that the parties, in preparation for the hearing, would prepare additional materials. And so I'm going to allow the notice of service of affidavit of Mr. Farris to be of record.

I'm also going to allow the three letters that Mr. Goodin tendered here today to be of record as part of the record of this hearing. And the clerk can enter those as Plaintiff's Exhibits 1, 2 and 3 to this hearing.

(Plaintiff's Exhibits Nos. 1 through 3 received in evidence.)

THE COURT: I am ruling that the plaintiff has failed to demonstrate to me that the service of process on the Sun Bank, Sun Trust defendant was properly made in July of 1999; that it is unclear, at best, that an appropriate person authorized to accept service of process on behalf of the Sun Trust defendant actually received process.

The letter of Mr. Farris dated August 27th, 1999, would give every indication that despite the fact that Mr. Farris' name appears on the return of service, that he, in fact, did not receive or was not served with the complaint at that time.

It also is unclear to me whether the appropriate Sun Trust defendant – corporate defendant was served in the case because it's unclear to me who the appropriate Sun Trust defendant is.

Given that the stated purpose and the requirement of the rule is that a person who is being served with process or a corporate entity be put on notice of the complaint so that they can timely respond, I find insufficient evidence in the record to demonstrate to me that the corporate entity was properly and timely served.

I also note that when the corporate defendant, the Sun Trust defendant was — after the letter of August 27th was written by Mr. Farris, that Sun Trust did retain counsel. That counsel did retrieve a copy of the complaint and that Sun Trust did file a motion to dismiss on September 21st, 1999. It's entitled defendant Sun Trust Bank North Florida N.A., formerly known as Sun Bank/North Florida N.A., paren, incorrectly referred to in the complaint as Sun Trust N.A.'s Motion to Dismiss and that's at Doc. 9.

That motion remains pending and that motion was filed before the district judge had taken any action on any of the other motions filed in the case, so there's been no prejudice to the plaintiff by the filing of the — the later filing of the Motion to Dismiss by the defendant.

So for all those reasons and because I believe that the law does require me to do so and also in the interest of having matters decided on their merits as opposed to default, which the law certainly favors, the Plaintiff's Motion for Hearing on Judgment by Default to the extent that it asks for a hearing is granted. We've had the hearing.

To the extent that it seeks an entry of default is denied. Plaintiff's Amendment to Motion for Hearing on Judgment by Default is denied. Plaintiff's Motion for Entry of Default is denied.

Plaintiff's motion for Entry of Default and Hearing on Damages is denied. Those are respectively Documents 7, 13, 19 and 23.

Okay. Now it's time to talk about what this suit is about. And Mr. Goodin, when I looked this morning at the — to look at your complaint, I realized that it wasn't actually a complaint. It's called a petition.

And I'm not aware — of course, y'all carry much more knowledge of the previous cases you've had than I do, and so I don't know anything about any history of this in terms of prior litigation or any orders that have been entered by the court previously other than what Mr. Vaughn has referred to, but I don't even know in what context that is I certainly don't know what the Eleventh Circuit did with it or didn't do with it.

So I am just focusing for the moment on what we have in front of us. Obviously, if any party feels that there are matters that the Court ought to be taking judicial notice of or if there are motions that are appropriate to be filed that raise the issue of prior proceedings, the parties know how to do that. But I'm not going to try to deal with that at the moment.

What I am trying to understand from you, Mr. Goodin, is what this petition is. And as I looked at it, it didn't even name Sun Trust or Sun Bank in the petition. And how can you have a complaint in court against a defendant and not even say what it is that they supposedly have done wrong? That's one question I have.

My other question is, what the —— I know you're pro se, but what's the essence of this cause of action that you've got everybody here in federal court on?

MR. GOODIN: The essence of it, sir, is wrongful eviction and concealment of facts in circuit court that Mr. Hayden orchestrated back in 1985.

I ask the Court to take judicial notice of the prior cases, the pleadings in the prior cases. I see no need in duplicating the

pleadings. That is why I ask the Court to take those cases into consideration.

It gives the actions — it gives the rules, regulations that I've cited and I just — for the — to keep from inundating the file, I request that the Court take judicial notice of those pleadings.

THE COURT: All right. But let me ask you a specific question.

First of all, a petition is probably not what you're intending to file. You were probably intending to file a complaint. But, obviously, you're a pro se plaintiff and I may be able to overlook that technicality.

But a complaint or a document that's filed in the federal court seeking relief has to do a number of things. It has to, in a short, plain way, state what's wrong, who did it to you and why the federal court has jurisdiction. In other words, why — what federal laws or constitutional provisions have been violated.

And when I read this petition, it's not at all clear to me what exactly it is you're alleging. I see that there's a wrongful eviction. I see you talk about some orders of the state court. I see you talk about Section 1983, but it's very unclear to me what the basis for your claim is.

It's also totally — unless I'm missing it — there's not one mention of Sun Trust in here. And you can't have a complaint against a defendant that doesn't even mention the defendant and say what it is you think they've done wrong.

So, you know, we've had all this hue and cry over this default issue and it's not at all clear to me that — as it stood right now, Sun Trust might have been able to take the default and not suffered any consequences because they don't appear to be named in the complaint and they also don't appear to have any relief sought against them.

So, are you understanding what I'm saying to you?

MR. GOODIN: Yes, sir, Your Honor. I believe I do.

The violation is a violation of my constitutional right to due process. Cause of action is Title 1983, City of Jacksonville being a state action.

THE COURT: And how does Sun Trust fit into it and why isn't there anything about them in this complaint if you're seeking damages or relief against them?

MR. GOODIN: Sun Trust gets into it because they concealed the truth. They concealed the wrongful eviction that was — they concealed the check 149, which was fifth point in the trial of 1985.

They upheld the wrongful eviction by the concealment of evidence concealment of evidence and pertinent testimony.

THE COURT: 1985 is an awful long time ago and I'm wondering what — why it is you think that whatever statute of limitations would apply haven't already run?

MR. GOODIN: It's my understanding that — well, this action's been filed this time, City of Jacksonville was brought in as a state actor. They've always been a main part of the pleadings. They have never been named a defendant. Being pro se litigant and not — they've always been part of the pleadings — you lost me there.

THE COURT: What I'm asking you is, I'm looking at a petition or a complaint that the only place I see the name of Sun Trust is in the style of the case. But when I read the complaint, I don't see anything about Sun Trust in there, and you can't have a complaint against somebody — you can't serve them with a complaint that doesn't tell them what it is you're saying they did wrong or what relief you're going to be entitled to if you're correct. And that's what I'm asking you about.

MR. GOODIN: That's why I've asked the Court to take judicial notice of the pleadings in other cases, sir.

THE COURT: You're not going to be able to do it by judicial notice. You're going to have to — if you have a valid federal claim against this bank, you're going to have to say it in this complaint. Otherwise, you're not going to be able to proceed.

You're not going to be able to just say to the Court, You have to read all these other files to figure out what it is that Sun Trust may or may not have done wrong. That's not going to fly.

Now, that doesn't mean that you can't reference those other cases, but you're still going to have to have something in this complaint that talks about Sun Trust if you, in fact, believe that you have a good faith basis for them to be in this case.

I will also tell you — and Mr. Vaughn referred to it, and I don't know anything about the history of these other cases — but there is a rule called Rule 11 that says you have to have a good faith basis both in law and in fact to bring a complaint against somebody in federal court.

And if you do, you're entitled to be here. If you don't, you're not. So you need to think about that carefully with respect to your claims against Sun Trust and, for that matter, the City of Jacksonville

Are you understanding what I'm saying?

MR. GOODIN: Yes, sir, I understand.

THE COURT: All right. What I'm going to do, I think — but let me hear from the defense counsel

But what I'm inclined to do, because the law does protect pro se plaintiffs and gives them an opportunity to present their claims in court, what I would normally do if I saw a complaint like this, is I would normally give you one chance to file what's called an amended complaint — you may be familiar with that from other cases — and to try to do a better job of telling the Court

what it is you're — that you're saying happened to you, who did it to you, what they did and what federal constitutional claim is raised by that.

And then I would, if I proceeded in that fashion, I would then allow the defendants to file whatever papers against that complaint they wanted to and then the matter would proceed. And it would be with the understanding that, you know, I'm giving you another chance to try to file a complaint that would be more in keeping with the rules. But that if you failed to do so the next time, then your case could be subject to dismissal.

MR. GOODIN: Yes, sir.

THE COURT: Mr. Vaughn, that's how I'm thinking I ought to proceed, but I'll be happy to hear from you, sir.

MR. VAUGHN: That's fine with us, Your Honor.

One thing I would bring to the Court's attention is that we are on schedule for a case management order. I would ask at this time that the Court extend the time for that exercise in light of the fact that we may be filing motions that would ——

THE COURT: I am inclined to do that as well. We generally do not delay our case management orders because of the pendency of Motions to Dismiss. But given the history of this case, I may well — I won't promise that to you, but I'll certainly think about that.

I'm not going to at this time conduct — I intended to conduct — let me hear from you, Ms. Norton. What is your client's view of allowing Mr. Goodin to file an amended complaint and allowing the defendants to then file responses to that so we can see where this case is going to go.

MS. NORTON: Your Honor, the City of Jacksonville is fine with them filing an amended complaint. We still hold that we believe there's a statute of limitations defense.

THE COURT: You would have — everybody would retain all their abilities to raise whatever grounds they want to raise against the amended complaint. And I heard Mr. Vaughn reference other cases and Rule 11 and all that.

If that needs to be part of the response to the amended complaint, then that may be the time to do it. I don't know. I'm not telling you what to do.

But I do think that Mr. Goodin ought to be given another opportunity to file an amended complaint so that he has every chance to say what it is he wants to say, and then it can be determined wherever the matter proceeds from there.

So that's what we're going to do. And I will not proceed with case management. I intended to go ahead and try to establish some deadlines today and so forth. But now, having considered it further, I'm not going to do that today.

And then I will take under advisement whether or not to require the parties to go ahead with their case management compliance. You don't have to do it at this time until further order of the Court. We'll leave it in that way.

Ms. Norton, did you have something you wanted to say.

MS. NORTON: One other thing, Your Honor. It's become apparent to me sitting at this table that many things Mr. Goodin has not sent to the City of Jacksonville that he has served on the Defendant Sun Trust.

So I would like to ask the Court to remind Mr. Goodin that we also need to be served with those documents.

THE COURT: All right. I'm speaking to all parties because we also — the Court, apparently, is having a problem getting things to Mr. Hayden. Has that been remedied, Mr. Hayden, as far as you can tell?

MR. HAYDEN: We certainly hope so, Your Honor.

THE COURT: To the extent that that was any error on our clerk's office, I apologize to you because I know it's disconcerting, to say the least.

I'm telling you, Mr. Goodin, but I'm also telling the other parties that any papers that are filed with this Court or served in this case, each party has to certify that they have sent it to all other parties.

So the three entities in this case are Mr. Goodin, the City of Jacksonville through Ms. Norton, Sun Trust through the Hayden firm and Mr. Vaughn.

And any pleading filed by any party, anything served, anything filed with the Court, a certificate of service needs to be attached to it certifying that all other parties have been served with that pleading in the case.

Mr. Goodin, what I'm going to do, sir, is I'm going to give you a chance to amend your complaint to address some of the issues that I've discussed with you. I don't — can't think of any reason why this would be a petition, so I'm going to ask you to call it a complaint instead of a petition. And I will ask you to call it an amended complaint and to address some of the issues that I have raised with you.

And then I'm going to require the defendants to respond within a certain amount of time. But, Mr. Goodin, let me ask you, sir, because there's no particular rush and I don't want to disadvantage you. I know you're pro se.

How much time do you request me to give you in order to file your amended complaint?

MR. GOODIN: I can have it filed within 20 days, Your Honor.

THE COURT: That will be fine. All right. Then Mr. Goodin will file an amended complaint. I'll give you a couple of extra days, no later than February the 25th, 2000.

All defendants will file responses to the amended complaint no later than March 17th, 2000. Based upon the filings of the parties at that time, the Court will decide what — how further to proceed.

The parties' case management obligations are suspended until further order of the Court. I'm also assuming and directing that no discovery or any other matters be undertaken until these issues of the amended complaint are resolved.

So the only thing I think the parties ought to be about in the next month or so, is Mr. Goodin ought to be filing his amended complaint and the defendants ought to be responding to it and there should be no other case activity until we get to take a look at it once it's at issue.

Is that understood, Mr. Goodin?

MR. GOODIN: Yes, sir.

THE COURT: All right. Mr. Vaughn, is that understood?

MR. VAUGHN: Yes, Your Honor.

THE COURT: Ms. Norton?

MS. NORTON: Yes, Your Honor.

THE COURT: All right. Is there anything else, then, we need to do today that would be helpful?

(No response)

THE COURT: All right. What I'm going to do is enter a written order on the motions that I ruled on today. I will also include in that written order — I won't state my reasoning. That will be of record if anybody ever needs it. But I will also state the deadlines in the order for the amended complaint and for the responses there, too, so everybody will have it in one place.

And, Mr. Hayden, if you don't get it within a week, call, because it will go out in the next day or two. So if you're still not getting things, please let us know.

Mr. Goodin, the address we have, have you been getting the matters from the Court?

MR. GOODIN: Yes, sir.

THE COURT: And Ms. Norton, we're getting matters to you from the Court.

MS. NORTON: Yes, Your Honor.

THE COURT: All right. Thank you-all for your time.

MR. GOODIN: Thank you, Your Honor.

MR. VAUGHN: Thank you.
(The hearing was concluded at 10:55 a.m.)

## CERTIFICATE

STATE OF FLORIDA

COUNTY OF DUVAL

I hereby certify that the foregoing transcript is a true and correct computer-aided transcription of my stenotype notes taken at the time and place indicated herein.

Dated this 11th day of February 1999.

s/ Robin H Owens
Robin H. Owens, RPR-CP

Robin Owens
My Commission # CC695364
Expires November 11, 2001
Bonded thru Troy Fain Insurance, Inc.

**APPENDIX E**

FILED
CLERK, U. S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA
AUG 7 1995

**DO NOT PUBLISH**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JUN 30 1995
MIGUEL J. CORTEZ
CLERK

No. 94-3471
Non-Argument Calendar

D.C. Docket No. 94-706—CIV-J-20

RICHARD B. GOODIN — Plaintiff-Appellant,

versus

SUN BANK, N.A. — Defendant—Appellee.

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Appeal from the United States District Court
for the Middle District of Florida

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(June 30, 1995)

Before TJOFLAT, Chief Judge, HATCHETT and CARNES, Circuit Judges.

PER CURIAM:

This 42 U.S.C.. § 1983 action against defendant Sun Bank arises out of Appellant Richard B. Goodin's alleged wrongful eviction by his landlord, for nonpayment of rent. Goodin alleged that the defendant Violated his right to due process by submitting a fraudulent check to the state court and then falsely informing the court that Goodin's rent check was returned for insufficient funds.

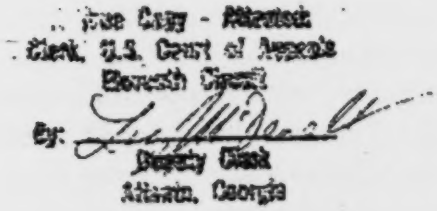
Sun Bank moved to dismiss the complaint on the ground that it was barred by res judicata, because Goodin had previously filed an identical action and this Court had determined that there was no subject matter jurisdiction regarding this matter. Sun Bank also requested that the court impose sanctions under Fed.R.Civ.p. 11. (R1-4 at 2-3; R1-7 at 1—2). The district court held that Goodin had failed to allege sufficient grounds for the court to determine that subject matter jurisdiction existed and, in any event, his action was barred by res judicata. (R1-12 at 1-2). It further held that Rule ii sanctions were warranted in view of Goodin's frivolous claim, but the only sanction it imposed was to order that Goodin "refrain from filing additional claims in this cause."

Goodin then filed a Fed.R.Civ.p. 59(a) motion for new trial, arguing, among other things, that diversity jurisdiction existed, and that he was entitled to a case management conference prior to dismissal of his case. The district court denied the motion for new trial, On appeal, Goodin does not challenge the district court's findings that subject matter jurisdiction is lacking and that his action is barred by res judicata, nor does he challenge the Propriety of barring future claims regarding this matter as a sanction under Rule ii, assuming the Court had jurisdiction to do so. Therefore, we deem those issues to be abandoned. See Rogero v. Noone, 704 F.2d 518, 520 n.1 (11th Cir. 1983).

Goodin's sole argument regarding the Rule 11 sanctions is that the district court had no authority to impose such sanctions in the absence of subject matter jurisdiction. That argument is foreclosed by Willy v. Coastal Corp., 503 U.S. 131, 137—139, 112 S.Ct. 1076, 1080—81, 117 L.Ed.2d 280 (1992).

Goodin also contends that under the local rules of court the district court could not dismiss his case prior to holding a case management conference. He cites no authority for this contention, which appears to be frivolous.

AFFIRMED.



**APPENDIX F**

FILED
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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

RICHARD B. GOODIN, Plaintiff,
V. CASE NO.: 94-706-CIV-J-20
SUN BANK, N.A. Defendant

**ORDER OF DISMISSAL**

Before the Court is Plaintiff's Motion for New Trial or, in the Alternative, Motion to Reopen Judgment (Doc. No. 13, filed October 3, 1994).

Plaintiff's Complaint states that Plaintiff and Defendant are both residents of Florida. (Doc. No. 1, ¶¶ 2—3). Therefore, Plaintiff cannot allege diversity of Citizenship as a basis for jurisdiction. Additionally, all other avenues of jurisdiction have been reviewed and rejected. Accordingly, Plaintiff's Motion (Doc. No. 13) is DENIED.

**DONE AND ENTERED** at Jacksonville, Florida, this 24th day of October, 1994.

s/
HARVEY E. SCHLESIGNER
United States District Judge

Exhibit #3

**APPENDIX G** (DO NOT PUBLISH]

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

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No. 93—2171
Non-Argument Calendar

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D. C. Docket No. 92-394-CIV-J-16

RICHARD B. GOODIN, Plaintiff-Appellant,

versus

SUN BANK/N.A., Defendant-Appellee.

---

Appeal from the United States District Court
for the Middle District of Florida

(January 5, 1994)

Before TJOFLAT, Chief Judge, DUBINA and BLACK, Circuit Judges.

PER CURIAN:

This is an appeal from the order entered by the district court[1] granting Appellee Sun Bank's motion for summary judgment[2] and denying Appellant Richard B. Goodin's (Goodin) motion for summary judgment. The district court ruled on the merits of Goodin's claims under 42 U.S.C. § 1983, apparently in deference to his pro se status.[3]

On appeal, this Court ~ sponte raises the question of whether the district court had subject matter jurisdiction over Goodjn's claims under Federal Rules of Civil Procedure 12(h)(3). Upon consideration, we hold that the district court lacked jurisdiction over the § 1983 action and therefore this Court has no jurisdiction with which to entertain this appeal.

The two elements required for success in stating a § 1983 claim are that the conduct complained of was committed by a person acting under color of state law and that the conduct deprived him of rights, privileges, or immunities secured by the Constitution or laws of the United States. Fullman v. Graddick, 739 F.2d 553, 561 (11th Cir. 1984). To establish that the wrongful conduct was "under color of state law," a plaintiff must demonstrate that the "conduct allegedly causing the deprivation of a federal right be fairly attributable to the State." Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 937, 102 S. Ct. 2744, 2753—54, 73 L. Ed. 2d 482

(1982). A defendant's actions are fairly attributable to the State if the deprivation is caused by a right created by the state, a rule of conduct imposed by the state, or a person for whom the state is responsible, and, the defendant is a "state actor."

Goodin has made no allegations that Sun Bank is a state actor. There is nothing in the record to even remotely connect Sun Bank to the State of Florida. Therefore, no § 1983 cause of action exists and

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[1]The parties consented to proceed before United States Magistrate Judge John E. Steele.

[2] Appellee's motion to dismiss was considered by the court as a motion for summary judgment.

[3]Goodin's complaint, asserting a cause of action for violation of his Fourteenth Amendment due process right, was liberally construed by the court to allege a violation of 42 U.S.C. § 1983.

neither the district court nor this Court has jurisdiction. Accordingly, the appeal is dismissed and we remand to the district court with instructions to dismiss Goodin's complaint for lack of subject matter jurisdiction.

APPEAL DISMISSED; REMANDED WITH INSTRUCTIONS TO DISMISS.

A True Copy - Attested:
Clerk, U.S. Court of Appeals
Eleventh Circuit
By: _____
Deputy Clerk
Atlanta, Georgia

**APPENDIX H**

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**JACKSONVILLE DIVISION**

RICHARD B. GOODIN,
Plaintiff,

v.

Case No. 92-294-Civ-J-JES (16)

SUN BANK, NATIONAL ASSOCIATION,
Defendant.

FILED
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Civ-J-JES(16)

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ORDER GRANTING DEFENDANT'S SUMMARY JUDGMENT MOTION AND DENYING PLAINTIFF'S SUMMARY JUDGMENT MOTION

This cause is before the Court[1] on cross motions for summary judgment. Defendant's Motion To Dismiss (Doc. #10) was treated as a motion for summary judgment; defendant's Memorandum of Law in Support of Motion for Summary Judgment (Doc. #18) was filed on August 17, 1992. Plaintiff's Motion for Summary Judgment (Doc. #17) was filed on August 14, 1992[2] Because plaintiff appears in this case pro se, the Court construes his pleadings liberally. Securities & Exchange Commission v.

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[1]The parties have consented to proceed before a United States Magistrate Judge and on June 26, 1992 this matter was referred to the undersigned. (Doc. #8).

[2]Defendant has not filed a response to this plaintiff's motion. Plaintiff's Reply to Defendant's Memorandum of Law in Support of Motion for Summary Judgment (Doc. #19) was filed September 16, 1992. Plaintiff's Amended Affidavit (Doc. #20) was filed November 12, 1992.

Elliott, 953 F.2d 1560, 1582 (11th Cir. 1992). Both parties assert that the undisputed material facts and the pertinent legal principles require the Court to enter judgment on their respective behalf. For the reasons set forth below, the Court grants defendant's motion for summary judgment and denies plaintiff's motion for summary judgment.

## I. Plaintiff's Complaint Allegations:

Plaintiff's Petition for Judicial Action (Doc. #1), read liberally, attempts to assert a cause of action for violation of his Fourteenth Amendment due process right. Because the due process clause does not itself create a private cause of action, the Court will construe the Petition to allege a violation of 42 U.S.C. §1983 wherein the constitutional right violated is the Fourteenth Amendment due process right.[3] Read very liberally, the Petition and the subsequent documents filed by plaintiff will also be construed to assert a cause of action for a civil conspiracy to violate his due process right.

The specifics of these alleged due process violations as set forth in the Petition are as follows: (1) Plaintiff is a holder in due course of Check #149; (2) The original Check #149 and an affidavit from a forensic document expert were submitted by plaintiff in a state court case he initiated, but Circuit Judge Frederic A~. Buttner dismissed the complaint with prejudice. Plaintiff alleges that these items were not considered by the judge prior to his adverse judicial ruling; (3) Plaintiff was evicted from his business without benefit of a court order and two days prior to the expiration of the applicable time period under Florida Rules of Court 1.550; (4) Plaintiff's prior counsel sent evidence of timely rental payments to the wrong judge, and the evidence was not provided to the proper judge until an adverse ruling had been made; and (5) A number of persons have suppressed evidence of these violations of plaintiff's constitutional

[3]Plaintiff alleges six state statutes as the additional basis for jurisdiction. See Notice Of Answering Court's Interrogatories Directed At Plaintiff, Doc. #9, pages 1—2. None of these state statutes provide a basis for federal jurisdiction or state a federal cause of action.

rights, attorney errors, improper administration of the law, and haphazard handling of his evidence.

None of the allegations in the Petition, even if true, relate to conduct of defendant Sun Bank. However, because of plaintiff's pro se status the Court has examined the other documents he has filed with the Court to see if specifics of the causes of action against Sun Bank are alleged. In the Notice Of Answering Court's Interrogatories Directed To Plaintiff (Doc. #9), plaintiff sets forth his factual basis as to Sun Bank:

> Because of the bank's statements concerning check #149 and the illegible copies provided by said bank in complete opposition to the evidence of the actual check #149 and the bank advice notice, Plaintiff was unable to recover in Circuit Court, the assets of his business which were lost to him as a result of his wrongful eviction. Check #149 would have proven the eviction was invalid because he would not have been in arrears on his rental.

Elsewhere, plaintiff alleges that Sun Bank "intervened to cover up not only the wrongful eviction that took place but also concealed the truth concerning Check #149." Plaintiff's Answer To Defendant's Motion To Dismiss, Doc. #10, page 1, ¶1. Plaintiff reiterates that this case "is for violation of my Constitutional right of Due Process." ~ at page 2, ¶3. Plaintiff alleges that Sun Bank provided plaintiff with an illegible copy of Check #149 and falsely testified that it had been returned as insufficient funds despite the absence of an "NSF" stamp on the check.

Motion For Summary Judgment, Doc. #17, pages 3-4. Plaintiff alleges that after he found the original of Check #149 Judge Henry Martin refused to even look at it; this is alleged to be part of the "totality" of the concealment and breach of fiduciary duty by Sun Bank. Id. at page 6. Plaintiff alleges that Sun Bank has denied the accuracy of Check #149 by testifying that it had been returned NSF despite the lack of any such markings on the check itself. Id. at page

7. Plaintiff has characterized his cause of action as being a: violation of due process of law by the concealment of a liability founded on a written instrument as stated in FS 95.ll(2)(b). This violation caused the upholding of a wrongful eviction and Plaintiff's failure to recover such losses as he sustained as a result of this wrongful eviction. Sun Bank is responsible for this violation, not by its negligence, but by its willful and premeditated false testimony in court..

Plaintiff's Reply To Defendant's Memorandum Of Law In Support Of Motion For Summary Judgment, Doc. #19, page 1. Finally, plaintiff has alleged that Sun Bank "in conspiring to suppress the evidence of that check, and cloud the issues in Case No. 85—13875, in the Circuit Court, Fourth Judicial Circuit, and in Case No. 84—2137— SP, Duval County Court, and in other actions relevant to this matter, has caused the upholding of that wrongful eviction." Plaintiff's Amended Affidavit, Doc. #20, page 1.

**II. Undisputed Material Pacts:**

The Court finds that the pleadings, affidavits, depositions, and other documents which have been filed with the Court establish the following undisputed material facts:

1. The pleadings in Case No. 84-2137 SP in the County Court in and for Duval County Florida, Exhibit "A" to Defendant's Memorandum of Law In Support of Motion for Summary Judgment (Doc. #18), establish the following:

(a) Eviction proceedings against plaintiff were initiated in January, 1984 in County Court in and for Duval County, Robert L. Tuggle, Inc. v. Richard Goodin, Case No. 84—2137—Sp. The cause for the eviction was non—payment of rent;

(b) Plaintiff was represented by several attorneys throughout these proceedings;

(c) Judge Louise Walker entered Final Judgment of eviction on May 11, 1984;

(d) Plaintiff was physically evicted from his business premises on May 30, 1984;

e) No later than February 25, 1985 the parties to the eviction proceedings disputed the amount of rent paid in January, 1983, focusing upon a check dated January 10, 1983 (Check #149) presented by Goodin drawn on Flagship Bank (now Sun Bank);

(f) On May 13, 1985 Goodin's attorney filed a Motion For Relief From Final Judgment asserting the existence of newly discovered evidence "consisting of bank records which could not have been discovered in time to move for a new trial or rehearing and misrepresentation of the plaintiff as to the status of the rental payments, together with the plaintiff's misconduct in conspiring and agreeing with a third party for the rental of the premises prior to any alleged default in the rental.";

(g)Goodin filed a copy of Check #149 with the Circuit Court on June 14, 1985;

(h)Documents inadvertently filed by counsel with the wrong judge were filed before the correct judge as of August 23, 1985;

(i) On September 17, 1985 Judge Walker filed an Order denying Goodjn's Motion for Relief from the Final Judgment. Judge Walker stated the respective position of the parties and her decision as follows:

> 1. The parties disagree as to the total amount of lease payments made in the month of January, 1983.
>
> 2. The Plaintiff contends that the Defendant presented to it a check drawn to the Flagship Bank dated January 10, 1983, which was dishonored by Flagship Bank on January 12, 1983, and that Defendant subsequently paid to Plaintiff on January 17, 1983, the sum of $400.00 in cash as a replacement for the check dated January 10, 1983.

3. The Defendant contends that he presented to the Plaintiff a check dated January 10, 1983; that said check was initially dishonored by Flagship Bank; that Defendant paid to the Flagship Bank on January 12, 1983, the sum of $400.00 in cash and that said check was then paid by Flagship Bank; that Defendant subsequently, on January 17, 1983, paid an additional $400.00, representing prepayment of the February, 1983, rent, for a total of $800.00 paid during the month of January, 1983.

4. Plaintiff presented documentary evidence and testimony that it received only $400.00 total from the Defendant during the month of January, 1983, and that no sum was credited to any of its accounts by Flagship Bank representing payment of the January 10, 1983, check from Defendant.

Therefore, relying upon said testimony, it is ORDERED AND ADJUDGED, that the Defendant's Motion for Relief from the final Judgment is denied.

2. On October 8, 1985, Plaintiff sued Sun Bank/North Florida, National Association, f.k.a Flagship Bank, in Duval County Circuit Court, Case No. 85-13875—CA. The Complaint asserted causes of action for replevin, conversion, and breach of fiduciary duty.

(a) Plaintiff alleged that he maintained an account at Sun Bank/North Florida, National Association, f.k.a Flagship Bank, upon which he drew Check #149 in the amount of $400.00 in payment of rent on the premises located at 6317 Norwood Avenue; plaintiff alleged that he was informed by a Bank employee on January ii, 1983 that the check would not be honored due to insufficient funds; that on January 12, 1983 he paid a bank employee $400.00 in cash in return for the original Check #149 and the Bank agreed to credit plaintiff's account $400.00; that Sun Bank failed to credit his account $400.00 or return the $400.00; that this resulted

in his eviction, consequential loss of investment, profit and income as well as embarrassment and humiliation. Punitive and special damages under F.S. §812.035 were requested.

(b) A jury trial was held before Judge Henry Martin on July 15—16, 1986.

(c) Plaintiff testified at the trial that: he wrote Check #149 to Robert L. Tuggle, Inc. on January 10, 1983 for the payment of rent for his business premises; on January 10, 1983 he gave this check to Tuggle's employee, knowing there were insufficient funds in his account to cover it; on January 11, 1983, he called Sun Bank to check on his balance and was told by bank employee that there were insufficient funds in his account and the check was about to be returned to Tuggle; that the bank employee told him he could obtain the check by bringing $400 to the bank; that on January 11, 1983 he went to the bank, gave a bank employee $400 to be credited to his account, and received the original Check #149 back from the bank employee; that the check did not have a NSF stamp on it. Goodin further testified that on January 17, 1983 he went to Tuggle's business and made a $400 pre—payment on the rent. Goodin next heard about Check #149 in August, 1984, in connection with the eviction proceedings and the claim that he was behind in his rent. Goodin testified that he did not have the original check because he thought it was in the possessions evicted from his business, but was not certain.

(d) Sun Bank produced witnesses at trial who testified that Goodjn had not called the bank about his balance; had not paid the bank $400; had not received the original check from the bank on January 11, 1983; had received the original check from an employee of Tuggle on January 17, 1983 when he paid the employee $400 cash to make the insufficient funds check good; and that the check the Tuggle employee returned to Goodin did not have a NSF marking on it, but nonetheless had been sent to Tuggle because there

were insufficient funds in Goodin's account.

(e) Sun Bank employees testified at trial that the check (1) had been deposited by Robert Tuggle, Inc. early January 11, 1983; (2) was processed through the Tuggle account by the bank pursuant to its normal procedures; (3) was later determined that at the time of the deposit there were insufficient funds to pay the check; (4) was not marked NSF on its front or back; (5) there was no known explanation as to the lack of such a marking on the check except human error; (6) despite the absence of a NSF marking, there were in fact insufficient funds in the Goodin account; (7) Goodin had not given the bank $400.00 to make the check good; and (8) Check #149 was not honored by the bank but was returned to Tuggle.

(f) As to the copy of Check #149 used initially at trial, Goodin identified it stated: "Yes, this is the check but this isn't a good copy. **I have a better copy."** (Tr. 29) (emphasis added). Other copies were obtained and used at trial. (Tr. 243). From the reverse side of the check bank employees testified that the check was processed and had gone through the bank proofing department (Tr. 173, 175, 189). There was an additional stamp on Check #149 which could not be read, but it would have to be the endorsement cancelled stamp. (Tr. 206—07, 244). It was not disputed at trial that the copy of the check introduced at trial did not have a NSF stamp on it. (Tr. 193, 221).

(g) The participants in the jury trial agreed that the issue for the jury to determine was what plaintiff Goodin had done in January, 1983, i.e., whether he gave $400 to the bank in exchange for the check or gave $400 to the Tuggle employee, who gave him the check. (Tr. 13, 16, 292, 298, 307).

(h) A jury verdict in favor of defendant Sun Bank/North Florida was returned on July 16, 1986.

3. The pleadings from the United States District Court in the Middle District of Florida case entitled Goodin v. Sun Bank of North Florida, f/k/a Flagship Bank, Case No. 89—233—Civ—J—12, Exhibit "C" and Exhibit "D" to Defendant's Memorandum of Law in Support of Motion for Summary Judgement (Doc. #18), establish the following:

(a) Plaintiff's Amended Complaint was filed on May 22, 1989;

(b) The Amended Complaint asserted alleged violations of the Securities and Exchange Act of 1934 and federal regulations in connection with allegations that Sun Bank employees concealed facts concerning the negotiation of Check #149, presented an illegible copy of Check #149, and testified in error in Case No. 85-13875 in Duval Circuit Court;

(c) The Amended Complaint asserted that the testimony of Sun Bank employees and the illegible copies of the check "...so convinced the Circuit Court judge that he actually refused to admit as evidence or even look at the original Check #149." (Exhibit "C' to Defendant's Memorandum of Law in Support of Motion for Summary Judgment (Doc. #18), p. 2);

(d) The Amended Complaint asserted that Check #149 was paid according to a Bank advice slip; that Check #149 was not returned for insufficient funds because no "NSF" was stamped on it as is normal banking procedure; and that Sun Bank was motivated by collateral agreements with the landlord;

(e) The Honorable Howell W. Melton entered an Order of Dismissal without prejudice on July 20, 1989 due to lack of subject matter jurisdiction, noting plaintiff relied on a federal criminal statute, 18 U.S.C. §1001, as the only basis for federal jurisdiction.

4. The pleadings from the Duval County Circuit Court entitled Goodin v. Sun Bank. N.A., Case Number 90-14468, establish the following:

(a) On August 31, 1990 Goodin filed a Petition For Judicial Action, setting forth the judicial history of his eviction and subsequent suits;

(b) Plaintiff's Second Amended Petition for Judicial Action was filed December 28, 1990 and asserted his "cause of action concerns testimony and evidence altered by Sun Bank, N.A. and its employees during the criminal trial[4] of Case Number 85-13875-CA with regard to Check #149.. ."; that on July 16, 1986 Sun Bank provided him with a certified copy of Check #149 which was illegible on the reverse side and did not indicate there were insufficient funds in that account; that Bank employees assumed facts not in evidence when they swore at the trial of Case No. 85—13875 that the check had been returned for insufficient funds; that the illegible copy of the check, the misleading testimony of the bank employees, and the fact that he lost the original check resulted in a jury verdict against him; and that he had discovered the original Check #149 so he could now "repudiate" the testimony of Bank employees who are guilty of making false statements under oath and of filing false bank reports in violation of F.S. § 817.16.

(c) This action was dismissed with prejudice upon motion of Defendant Sun Bank on February 21, 1992.

5. Plaintiff filed the current action in the United States District Court For The Middle District of Florida, Jacksonville Division, on April 27, 1992.

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[4]This was actually a civil trial.

**III. Competing Summary Judgment Claims:**

A. Defendant's Motion For Summary Judgment:

Defendant Sun Bank alleges that: (1) the Petition does not state a claim against defendant Sun Bank, N.A.; (2) any claim plaintiff has asserted in this action is barred by the doctrine of res judicata; (3) any claims are also barred by the applicable statute of limitations; and (4) the Petition was filed in the wrong division of the Middle District of Florida.

B. Plaintiff's Motion for Summary Judgment:

Plaintiff's Motion for Summary Judgment asserts in essence that the factual allegations the Court has summarized above are not disputed by Sun Bank and justify a judgment in his favor because they establish that his due process right has been violated. Plaintiff also asserts that summary judgment should be granted as a sanction for non—compliance with a prior court order.

**IV. Summary Judgment Principles:**

A motion for summary judgment may be granted only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgement as a matter of law." Fed.R.Civ.p. 56(c). The moving party bears the initial burden of establishing the lack of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Goree v. Winnebago Industries Inc., 958 F.2d 1537, 1539 (11th dr. 1992). All doubt as to the existence of a genuine issue of material fact must be resolved against the moving party regardless of the probative weight or value of proffered evidence, and all evidence is viewed in a light most favorable to the non-moving party. Sainmons V. Taylor, 967 F.2d *1533,* 1538 (11th Cir. 1992). When the moving party meets its burden, the nonmoving party must then "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, admission on file,' designate 'specific facts showing that there is a

genuine issue for trial.'" Celotex Corp. at 324. There is a genuine issue for trial if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The Court must deny a motion for summary judgment if there exists a genuine issue of material fact for trial. Fed.R.Civ.p. 56(c).

**V. Application of Summary Judgment Principles To Facts of Case:**

(1) Elements of **Causes of Action:**

Plaintiff's cause of action is pursuant to 42 U.S.C. § 1983, which provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State... subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit inequity, or other proper proceeding for redress...

§1983 creates no substantive rights, but merely serves as a vehicle for vindicating federal rights. Oklahoma City v. Tuttle, 471 U.S. 808, 816 (1985). To establish a cause of action under §1983 plaintiff must establish that: (1) defendant intentionally committed acts which violated one or more of his constitutional rights; (2) in so doing, defendant acted under color of the authority of the State of Florida; and (3) defendant's acts were the proximate or legal cause of the damages sustained by plaintiff. To establish a cause of action for a violation of procedural due process plaintiff must show: (1) a constitutionally protected interest in life, liberty or property; (2) governmental deprivation of that interest; and (3) the constitutional inadequacy of the procedure accompanying the deprivation. Failure to establish any one of these elements is fatal to a due process claim. Bank of Jackson County v. Cherry, 1993 WL 100 (11th dr. Jan. 11, 1993) (on rehearing). A civil conspiracy requires an agreement be

tween two or more persons to violate plaintiff's due process rights.

**(2) Allegations In Plaintiff's Petition And Other Documents:**

(a) Misconduct of Others:

Plaintiff alleges that his due process rights were violated by various misconduct of others which took place in connection with the state court proceedings. The Court will assume for purposes of this summary judgment motion that all these allegations regarding others are true.[5] Assuming the truth of these matters, no cause of action against Sun Bank is alleged or established. There is no factual evidence of any kind that Sun Bank caused this conduct by others or conspired with any of the other persons to deprive plaintiff of his due process rights. Therefore, defendant's motion for summary judgment as to the alleged cause of action against Sun Bank in the Petition must be granted.

**(b) Additional Allegations Against Sun Bank:**

Construing the pleadings most liberally, plaintiff alleges the following against Sun Bank: (1) Sun Bank provided an illegible copy of Check #149 to plaintiff; (2) Sun Bank employees gave false testimony in the 1985 jury trial; (3) Sun Bank covered up a wrongful eviction; and (4) Sun Bank conspired to suppress evidence and cause the wrongful eviction.

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[5]Thus, for example, the court will assume that plaintiff's eviction was two days prior to the time allowed by Florida Rules of Court 1.550; that his prior attorney sent crucial evidence to the wrong judge; that this evidence was not admitted in his trial; that his landlord lied concerning a new tenant; that Judge Martin would not listen to plaintiff's evidence and entered orders against plaintiff; that Judge Buttner would not consider the original check #149 or the affidavit of Mr. Quinn; and that other persons suppressed evidence of these activities.

**(i) Illegible Copy of Check #149:**

Assuming the Sun Bank did provide an illegible copy of Check #149 to plaintiff, the undisputed facts do not establish a cause of action. There is no dispute that Sun Bank did not retain the original check; plaintiff concedes that he received the original check back from Sun Bank on January 12, 1983, lost this check in the ensuing 14 months prior to the eviction, and later found it among his belongings sometime after the 1986 jury trial. Plaintiff has no constitutionally protected liberty or property interest in a bank producing a legible copy of a check when the original has been returned to him.

Additionally, there is no allegation that Sun Bank had a more legible copy that was not provided. In fact, plaintiff's counsel produced multiple copies of Check #149 at the trial which were better than the first copy used. The copy was provided initially in connection with the attempt to obtain relief from the eviction judgment, and thus plaintiff was on notice since at least February, 1985 of the quality of the copy. There is no evidence of an agreement by Sun Bank with others to produce this illegible check.

Further, the original check that plaintiff now possesses did not establish any different information than had been conceded at trial: There was no NSF marking on the check and the check had been initially processed by the Bank. The undisputed material facts clearly establish that plaintiff's due process rights were not violated.

**(ii) False Bank Employee Testimony:**

**Plaintiff also alleges** that Sun Bank employees gave false testimony during the 1986 jury trial. The testimony at trial by Bank employees was that the absence of a NSF stamp on Check #149 was not conclusive as to its insufficient funds and that plaintiff did not have sufficient funds in the account to cover that check. (See Tr. 192—196 and 207 in Case No. 85—

13875—CA)[6] Assuming for purposes of the motion that this testimony was knowingly false, no cause of action can be stated. The testimony of witnesses during judicial proceedings, even if false, is immune—*from* civil suit. Burns v. Reed, 111 S.Ct. 1934, 1941 (1991); Fullman v. Graddick, 739 F.2d 553, 564 (11th dr. 1984).

**(iii) Coverup And Conspiracy:**

Plaintiff's conclusory allegations of a coverup and conspiracy are not supported by any evidence other than the illegible copy and the false testimony. For the reasons set forth above, the undisputed facts are insufficient to establish a cause of action.

Therefore, the undisputed material facts and the established principles of law show that no cause of action has been or could be proven by plaintiff against Sun Bank. Therefore, a judgment in favor of Sun Bank shall enter.

**(3) Defendant's Res Judicata Affirmative Defense:**

Additionally, Sun Bank asserts judgment in its favor is warranted on res judicata grounds. The Court agrees. Res judicata makes a final, valid judgment conclusive on the parties and their privies as to all matters of law and fact that were or should have been adjudicated in the prior proceeding. In Re Justice Oaks II Ltd., 898 F.2d 1544, 1550, n. 3 (11th dr.), cert. denied ill S.Ct. 387 (1990). Res judicata bars litigation of matters decided in a prior proceeding if (1) the prior decision was rendered by a court of competent jurisdiction, (2) there was a final judgment on the merits, (3) the parties, or those in privity with them, were identical, and (4) the present claims are the same as in the previous litiga

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[6]The original check and the Affidavit of Don Quinn do not refute this testimony. Bank witnesses had conceded the absence of the normal NSF marking and the original processing of the check.

tion. Israel Discount Bank Ltd. v. Entin, 951 F. 2d 311, 314 (11th Cir. 1992). For purposes of res judicata, causes of action are the same if . . . "the present case 'arises out of the same nucleus of operative fact, or is based upon the same factual predicate, as a former action' or 'arise out of the same transaction or series of transactions." Id., at 315.

The Court finds all allegations against Sun Bank, N.A. in the cause presently before the Court either were or could have been raised against Sun Bank in the prior Circuit Court proceedings (Case No. 85—13876 and Case No. 90—14468). Both state court proceedings resulted in decisions by a court of competent jurisdiction. A final judgment was rendered on the merits in both cases. The parties to both cases were identical. The claims asserted by plaintiff in this case could have been presented in at least one of the two prior state cases. The illegible copy was first produced in connection with the attempt to obtain relief from the eviction. Plaintiff had received a copy of Check #149 by at least June 14, 1985, and any claim regarding the copy could and should have been raised in Case No. 85—13875. By the 1990 proceeding plaintiff had found the original Check #149. Plaintiff cannot split his causes of action against Sun Bank, N.A. relating to or arising out of Check # 149; the claims could have been raised in prior proceedings between these parties.

Plaintiff asserts that this suit is for violation of due process whereas the others stated different causes of action. However, res judicata bars consideration of legal theories actually presented in prior proceedings ~ also any other theory that could have been raised in the prior proceeding. The bar of res judicata "extends not only to the precise legal theory presented in the previous litigation, but to all legal theories and claims arising out of the same 'operative nucleus of fact'." Manning v. City of Auburn, 953 F.2d 1355, 1358—59 (11th dr. 1992). See also Kremer v. Chemical

Construction Corp., 456 U.S. 461, 481 n. 22 (1982); N.A.A.C.P. v. Hunt, 891 F.2d 1555, 1561 (11th Cir. 1990) ("the mere changing of the theory on which the plaintiff proceeds does not constitute a distinct and different cause of action obviating the defense of res judicata.").

The Court, therefore, finds plaintiff's claims concerning Sun Bank's handling and copying of Check #149 and the subsequent testimony of its employees were or could have been previously litigated in Case No. 85-13875 and/or Case No. 90—14468 in Duval County Circuit Court; that any additional causes of action arise out of the handling of Check #149, the subsequent testimony concerning that check, and the eviction; and therefore the causes of action in this case are barred by res judicata principles.

**(4) Statute of Limitations Affirmative Defense:**

Defendant also asserts that any cause of action against it are barred by statute of limitations because the time would have commenced in 1984 with the eviction. Any action on a written contract is subject to the five year statute of limitations of F.S. §95.11(2) (b); an action for negligence, fraud, statutory liability or contract not founded upon a written instrument is subject to the four year statute of limitations. F.S. S95.11(3). An action for due process violations under the auspices of 42 U.S.C. §S1983 and 1985 must be brought within four years, the length c_~ the residual personal injury statute of the forum state. Lufkiri V. McCallum, 956 F.2d 1104, 1106 (11th Cir. 1992), cert. denied ].:13 S.Ct. 326 (1991)

Here, this Complaint was filed on April 27, 1992. Therefore, the statute of limitations bars any cause of action which accrued before April 27, 1988. Here, the eviction proceedings were in 1984, the check was first produced in 1985, and the civil jury trial was in 1986. Therefore, Goodin's complaint is barred by the four year statute of limitations. It

would also be barred by the five year statute of limitations Goodin incorrectly alleges is applicable.

The Court rejects plaintiff's assertion that any statute of limitation was tolled by either his inability to locate original Check #149 or defendant's production of an illegible. The statute of limitations cannot be tolled by plaintiff's inability to find evidence in his own possession. Sun Bank is not the cause of plaintiffs recordkeeping practices for the 14 months prior to the eviction or to plaintiff's lack of diligence in locating the original check in a timely manner.

The statute of limitations can be tolled when defendant fraudulently conceals the existence of a cause of action. Powell v. Radkins, 506 F.2d 763 (5th Cir. 1975). However, fraudulent concealment of a cause of action will toll the statute of limitations only if (1) there has been successful concealment of the cause of action by the defendant, and (2) the defendant must have used fraudulent means in the concealment. Crununer Co. v. Dupont, 255 F.2d 425 (5th Cir. 1958), cert. denied 358 U.S. 884 (1958); Prather v. Neva Paperback. Inc., 446 F. 2d 338 (5th dr. 1971).[7] There is no allegation or proof of concealment of the check by defendant, therefore, tolling is not applicable.

Therefore, summary judgment in favor of defendant must also be granted on the statute of limitations issue.

**(5) Improper Venue Affirmative Defense:**

Defendant asserts, without a supporting affidavit or other documentation, that defendant Sun Bank, National Association has its principal place of business in Orlando, and does not have any branches for the "customary transaction of its business" in the Jacksonville Division of the Middle

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[7]In Bonner v. Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

District of Florida. Therefore defendant argues that transfer to the Orlando Division pursuant to Local Rule 1.02(b) (3), Middle District of Florida, is warranted. The Court declines to exercise its discretion to transfer this cause to Orlando. Local Rule 1.02(e), Middle District of Florida.

**(6) Failure to Timely File Adequate Memorandum:**

Plaintiff's Motion for Summary Judgement (Doc. #17) asserts defendant failed to comply with the Court's July 22, 1992 Order requiring the filing of an adequate memorandum of law within eleven (11) days thereafter, and that summary judgment be granted as a sanction. However, this Court on July 29, 1992 gave notice that defendant's Motion to Dismiss would be treated as a Motion for Summary Judgment and each party was given twenty days to submit additional evidence or memorandum. Defendant's Memorandum of Law in Support of Motion for Summary Judgement (Doc. #18) filed August 17, 1992 was therefore timely filed under the authority of that Order. Plaintiff's Motion for Summary Judgment based on assertions of failure to timely file an adequate memorandum will be denied.

**(7) Rule 11 Sanctions:**

Defendant requests sanctions under Fed.R.Civ.P. 11. A pro se plaintiff may be sanctioned under Rule 11 for bringing claims barred by res judicata. Thomas v. Evans, 880 F.2d 1235, 1240 (11th Cir. 1989). The Court will decline to impose sanctions for the instant case. However, the Court notes that it has reviewed plaintiff's case in some detail and finds that it fails to state a cause of action, is barred by res judicata, and is barred by the statute of limitations. The Court

would view any initiation of new litigation over the incidents to be properly subject to Rule 11 sanctions.
Accordingly, it is no
**ORDERED**

1. Defendant's Motion to Dismiss (Doc. #6), filed May 21, 1992, which has been considered by the Court as a Motion for Summary Judgment, is GRANTED. Defendant's request for Rule 11 sanctions is DENIED.

2. Plaintiff's Motion for Summary Judgment (Doc. #17), filed August 14, 1992, is DENIED.

3. The Clerk of the Court is directed to enter a Judgment in favor of defendant on the Petition for Judicial Action (Doc. #1), filed April 27, 1992, directing that plaintiff take nothing.

DONE AND ORDERED at Jacksonville, Florida, this 27th day of January, 1993.

s/ John E. Steele
UNITED STATES MAGISTRATE JUDGE

Copies to:

Richard B. Goodin, pro se
Joseph G. Hern, Jr., Esquire

**APPENDIX I**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

RICHARD B. GOODIN, Plaintiff,
v. Case No. 92-394-Civ-J-JES(16)
SUN BANK, NATIONAL ASSOCIATION, Defendant.

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**ORDER**

In light of the Eleventh Circuit's Judgment issued as Mandate January 31, 1994, it is now

**ORDERED:**

1. The Judgment in a Civil Case (Doc. #22) entered January 27, 1993 is vacated and set aside.

2. The Complaint is dismissed for lack of subject matter jurisdiction.

**DONE AND ORDERED** at Jacksonville, Florida, this of February, 1994.

John E. Steele

UNITED STATES MAGISTRATE JUDGE

Copies to:
Hon. John H. Moore II
Chief United States District Judge
Richard B. Goodin, pro se
Joseph G. Hem, Jr., Esquire

**APPENDIX J**

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**JACKSONVILLE DIVISION**

FILED

**RICHARD R. GOODIN,**
Plaintiff,

vs. Case No.89-233-Civil-J-20

SUN BANX/NORTH FLORIDA, NATIONAL ASSOCIATION, etc.,
Defendant.

89 JUL 20 AM : 07

CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLA.
JACKSONVILLE, FLORIDA

## ORDER OF DISMISSAL

This cause is before the Court upon the following pending matters: (1) plaintiff's Request for Default Judgment, filed herein on June 14, 1989; (2) the Motion of the Defendant, Sun Bank/North Florida to Dismiss for Lack of Jurisdiction Over the Person, filed herein on June 22, 1989, to which plaintiff responded on July 7, 1989; and (3) this Court's Order to Show Cause why this cause should not be dismissed for lack of subject matter jurisdiction, entered herein on July 5, 1989, to which plaintiff responded on July 17, 1989.

Because plaintiff has failed to properly serve defendant pursuant to Fed. R. Civ. P. 4, the request for default judgment would be denied and the motion to dismiss would be granted, if this Court had subject matter jurisdiction over this cause. With regard to subject matter jurisdiction, the Court noted in the Order to Show Cause that plaintiff has not asserted diversity of Citizenship and relies upon a federal criminal statute, 18 U.S.C. § 1001, as the basis of jurisdiction. In his Reply to Order to Show Cause,

**EXHIBIT 4**

plaintiff has failed to identify a federal statutory or constitutional basis for this cause of action. Accordingly, this cause must be dismissed. Plaintiff requested an extension of time to do additional research if his response regarding subject matter jurisdiction is inadequate; however, in view of the record and relevant law, a dismissal without prejudice is appropriate and would enable plaintiff to ref ile and serve properly a cause of action against defendant if he can allege a basis for federal jurisdiction. Therefore, upon review of the file and relevant law, and the Court being otherwise fully advised in the premises, it is

**ORDERED AND ADJUDGED:**

1. That this cause is dismissed without prejudice for lack of subject matter jurisdiction; and

2. That plaintiff's Request for Default Judgment, filed herein on June 14, 1989, and the Motion of the Defendant, Sun Bank/ North Florida to Dismiss for Lack of Jurisdiction Over the Person, filed herein on June 22, 1989, are rendered moot by the Court's finding that the Court lacks sublect matter jurisdiction. DONE AND ORDERED in Chambers at Jacksonville, Florida, this 19th day of July 1989.

s/ Howell W. Melton
UNITED STATES DISTRICT JUDGE

Copies to:
Mr. Richard Goodin
Counsel of Record

**APPENDIX K**

**DISTRICT COURT OF APPEAL, FIRST DISTRICT**
Tallahassee, Florida 32399
Telephone No. (904) 488-6152
Date: October 29, 1987
Case No: BQ-371

RICHARD GOODIN Appellant/Petitioner
vs
SUN BANK/NORTH FLORIDA NATIONAL
ASSO f/n/a FLAGSHIP BANK
Appellee/Respondent

**ORDER**

Appellants motion for rehearing DENIED.

By Order of the Court
RAYMOND E.
RHODES, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Ralph E. Elliott, Jr., Esq., Jacksonville, Fl;
Calvin E. Hayden, Esq., Jacksonville, Fl

s/ _____
Deputy Clerk

**APPENDIX L**

**DISTRICT COURT OF APPEAL**
**FIRST DISTRICT**

RICHARD GOODIN
Appellant,

v

SUN BANK/NORTH FLORIDA NATIONAL ASSOCIATION f/n/a FLAGSHIP BANK
Appellee

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. BQ-371

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Opinion filed September 21, 1987.
An Appeal from the Circuit Court for Duval County.
Henry F. Marting, Jr., Judge

Ralph E. Elliott, Jr., Jacksonville, for Appellant.

Calvin E. Hayden of Cowles, Hayden, Facciolo, McMorrow & Barfield, P.A., Jacksonville, for Appellee.

PER CURIAM.

AFFIRMED.

SMITH, C.J., WENTWORTH and JOANOS, JJ, CONCUR.

**APPENDIX M**

**IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA**

**NO. 85-13875-CA**
**Division H**

RICHARD GOODIN
Plaintiff,

v

SUN BANK/NORTH FLORIDA NATIONAL ASSOCIATION f/n/a FLAGSHIP BANK
Defendant

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**VERDICT**

We, the Jury, return the following verdict:

1. Did the Sun Bank wrongfully deprive Richard Goodin of property belonging to him with an intent to deprive Richard Good of possession of said property.

YES_____ NO__X__

2. Did the Sun Bank commit a theft as defined by Chapter 812, Florida Statutes.

YES_____ NO__X__

(If your answers to Questions 1 and 2 are "No", then, it will not be necessary for you to answer Question 3. If your answer to either one or both of Questions 1 and 2 is "Yes", then it will be necessary for you to answer Question 3.)

2. The total damage sustained by Plaintiff, Richard Good in $_____

SO SAY WE ALL
DATED at Jacksonville, Florida, this July 16, 1986.

s/ George T. Page
FOREPERSON

**APPENDIX N**

IN THE COUNTY COURT,
DUVAL COUNTY, FLORIDA.

CASE NO. : 4-2137-SP

DIVISION: J

ROBERT L. TUGGLE, INC., a Florida corporation,
Plaintiff,

vs -

RICHARD GOODIN,
Defendant

FILED
SEP 17 1985
CLERK - CIRCUIT COURT

ORDER

THIS CAUSE came on to be heard on Defendant's Motion for Relief from Final. Judgment. The Court having received evidence heard the testimony of the parties, and argument of counsel., the Court finds:

1. The parties disagree as to the total amount of lease payments made in the month of January, 1983.

2. The Plaintiff contends that the Defendant presented to it a check drawn on the Flagship Bank dated January 10, 1983, which was dishonored by Flagship Bank on January 12, 1983, and that: Defendant subsequently paid to Plaintiff on January 17, 1983, the sum of $400.00 in cash as a replacement for the check dated January 10, 1983.

3. The Defendant contends that he presented to the Plaintiff a check dated January 10, 1983; that said check was initially dishonored by Flagship Bank; that Defendant- paid to the Flagship Bank on January 12, 1983, the sum of $400.00 in cash and that said check was then paid by Flagship Bank; that Defendant subsequently, on January 17, 1983, paid an additional $400.00, representing prepayment of the February, 1983, rent, for a total of $800.00 paid during the month of January, 1983.
4. Plaintiff presented documentary evidence and testimony that it received only $400.00 total from the Defendant during the month of January, 1983, and that no sum was credited to any of its accounts by Flagship Bank representing payment of the January 10, 1983, check from Defendant.

Therefore, relying upon said testimony, it is ORDERED AND ADJUDGED, that the Defendant's Motion for Relief from the Final Judgment is denied.

DONE AND ORDERED, in Chambers, in Jacksonville, Duval County, Florida, this 16th day of September, 1985.

s/ Lawrence Mackey
County Judge

Copies to:
Raymond W. Williams, Esq.
Julian S. Pinkston, Esq.

**APPENDIX O**

IN THE COUNTY COURT,
DUVAL COUNTY, FLORIDA.

VOL 5802 PG 223
OFFICIAL RECORDS

CASE NO. : 84-2137-SP

DIVISION: J

FILED
MAY 22 1984
S. Mayo Haughton
CLERK - CIRCUIT COURT

ROBERT L. TUGGLE, INC., a Florida corporation, Plaintiff,
vs -
RICHARD GOODIN, Defendent

FINAL JUDGMENT

THIS CAUSE coming on to be heard upon complaint of plaintiff for removal of defendant as a tenant from the hereinafter described premises, and it appearing that defendant was duly served with process as required by law, it is therefore

ORDERED AND ADJUDGED that:

The plaintiff, Robert L. Tuggle, Inc., a Florida corporation, do have and recover of and from the defendant, Richard Goodin, possession of the premises described in his Complaint herein, viz: Those certain premises situated in the City of Jacksonville, Duval County, Florida, known and described as:

6317 Norwood Avenue, Jacksonville, Duval County, Florida for all of which let Writ of Possession and Execution issue forthwith.

DONE AND ORDERED at Jacksonville, Duval County, Florida, this 11th day of May, 1984.

CC:
JULIAN S. PINKSTON, ESQ.
4233 Atlantic Blvd.
Jacksonville, Florida 32207

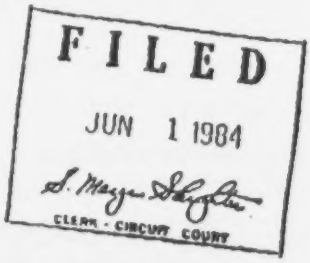
s/ Donna Hacker
JUDGE

S. PERRY PENLAND, ESQ.
1103 Blackstone Bldg.
Jacksonville, Florida 32202

**APPENDIX P**

VOL. 5802 PG. 223
OFFICIAL RECORDS

IN THE COUNTY COURT, IN AND FOR DUVAL COUNTY FLORIDA
Case No. 84-2137-SP
Division J




ROBERT L. TUGGLE, INC.,
a Florida corporation, Plaintiff
vs.
RICHARD GOODIN Defendant

**WRIT OF POSSESSION**

IN THE NAME OF THE STATE OF FLORIDA, TO THE SHERIFF OF SAID COUNTY:

WHEREAS, Judgement was rendered on the 11th day of May, 1984, that ROBERT L. TUGGLE, INC., a Florida corporation recover of and from RICHARD GOODING possession of 6137 Norwood Avenue, Jacksonville, Duval County, Flroida.

You are hereby commanded to post a copy of this writ as notice, conspicuously, on said premises and after 24 hours remove all person from said premises and to put ROBERT L. TUGGLE, INC., a Florida corporation in full possesion thereof. Given under my hand and the seal of the County Court, this 24th day of May, 1984.

S. MORGAN SLAUGHTER
CLERK OF THE CIRCUIT AND COUNTY COURTS
DUVAL COUNTY, FLORIDA
By: *Patricia D. Gustafson*
Deputy Clerk

Julian S. PinksLon, Esq.
4233 Atlantic Blvd.
Jacksonville, Florida 32207

**APPENDIX Q**

**ORIGINAL RETURN** Control # 13913

Robert L. Tuggle Inc., etc. - Plaintiff
Richard Goodin - Defendant

Type of Process: **WRIT OF POSSESSION**
Case #: 84-2137 SP
Court: County Div. J

Serve: Richard Goodin Address: 6317 Norwood Avenue
Attorney: Julian S. Pinkston
4233 Atlantic Blvd.
Jacksonville, FL 32207

Type of Service: Tack on Door, Other

Civil Costs (Non-Refundable): Tues, May 29, 1984 10:00 a.m.
9 13913 5/24/84 32.00

GI

MRW
THR

Received this process on the 24th day of May A.D. 1984 and served the same on Richard Goodin (individual) the within name (Defendant) at 10:00 a.m. on the 25th day of May A.D. 1984 in Duval County, Florida

☐ **1. INDIVIDUAL**
By delivering to the within named (respondent-garnishee-defendant -witness) a true copy of this process with the date and hour of service endorsed by me. And, at the same time I delivered to the within name (respondent-garnishee-defendant-witness) a copy of the complaint, petition, or other initial pleading or paper. (_____).

☐

**2. SUBSTITUTE**

By leaving a true copy of this process with date and hour of service endorsed by me and a copy of the complaint, petition or other initial pleading or paper (_____). By leaving the copies at (his/her) usual place of abode, with some person residing therein who is fifteen years of age or older to wit _____(relationship). And informing the person of their contents.

☐

**3. CORPORATE**

By delivering a true copy of the process with the date and hour of service endorsed by me and a copy of the complaint, petition, or other initial pleading or paper (_____) 10: (_____) as_____of said corporation in the absence of the president, vice-president, or other head of the said _____corporation in the absence of the cashier, treasurer, security, general director or my officers of the said _____as defined in F.S. 48.081, F.S. 49.091)

MRW
THR

**4. TACK ON DOOR**

By service upon the within named defendant, Richard Goodin by posting a true copy of this Writ on the door of the premises described within: after making two attempts to personally serve the within named defendant on _____and_____. The above named defendant or any member or (his/her) household could not be found at (his/her) usual place of abode in Duval County Florida.

☐ **5. NON-SERVICE**

And hereby return same unserved on the reason that after a diligent search no inquiry within named_____(respondent-defendant - witness), could not be found in Duval County; Florida_____19_____

MRW
THR **6. OTHER**

Further executed this writ on May 30, 1984 by removing all person from the within described premises, placing Robert L. Tuggle Inc. or agent in full possession thereof.

ONLY THAT SERVICE INITIALLED BY THE SERVER IS APPLICABLE TO THIS RETURN OR SIGNATURE - ALL OTHER PORTIONS SHOULD NOT BE CONSIDERED.

DALE CARSON, SHERIFF OF DUVAL COUNTY, FLORIDA

By: s/ 5144 5583

**APPENDIX R**

IN THE
**UNITED STATES COURT OF APPEALS**
ELEVENTH CIRCUIT
56 Forsyth Street
Atlanta, Georgia 30303

Case No. O1-12376-DD

RICHARD B. GOODIN,
A/K/A RICK GOODIN & SON SEAFOOD,
Petitioner-Appellant

vs.

CITY OF JACKSONVILLE
JACKSONVILLE SHERIFF'S OFFICE
and

SUN TRUST, NA.,
*FIKJA* SUN BANK NORTH FLORIDA
F/K/A FLAGSHIP BANK OF JACKSONVILLE
FIK/A FLAGSHIP STATE BANK OF JACKSONVILLE
Respondents-Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, DIVISION

PETITION FOR PANEL REHEARING

Richard B. Goodin
Appellant Pro-Se
16195 Shellcracker Road
Jacksonville, Florida 32226
(904) 751-7594

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## PETITION FOR PANEL REHEARING

The appellant in the above entitled cause moves this court for a rehearing in this case, and in support thereof assigns the following reasons:

In the opinion of the Eleventh Circuit Court of Appeals dated January 7, 2002. Page 4, Paragraph 2 (copy attached as Exhibit No. 1), "the record reflects that Goodin's most recent prior federal action against Sun-trust was dismissed with prejudice in September of 1994. This is identical to an ajudication on the merits, and therefor satisfies the first element of claim preclusion".

Fact No. 1- In the September 21, 1994 'Order of Dismissal' in Case No.94-706-CJV-J-20- Richard B. Goodin vs. Sun Bank, N.A.(copy attached as Exhibit No 2), Page 2, Paragraph 2, Judge Schlesinger states "Plaintiff has failed to allege sufficient grounds to invoke the Court's subject matter jurisdiction". This would remove the status of that Court as 'competent jurisdiction', and render moot all other points n that order. This is amplified in the October 24, 1994 Order of Dismissal of Plaintiffs Motion for a new trial or in the alternative, motion to reopen judgment (copy attached as Exhibit No.3) which also states that all other 'avenues of jurisdiction have been reviewed and rejected'.

Also included as Exhibits No. 4 and 5 are copies of the Orders by Judge Howell W. Melton, United States District Court, Middle District of Florida, Jacksonville Division, July 20, 1989, and Judgment in Case No. 92-394-Civ-J-JES (16), February 14, 1994, both of which were dismissed for jurisdictional reasons.

Plaintiff disputes the satisfaction of the first two elements of claim preclusion as stated in the January 7, 2002 Opinion of the Eleventh Circuit Court of Appeals.

Fact No 2. The third element of claim preclusion states "the parties or those in privity with them, must be identical in both suits". If you refer back to all the prior actions, nowhere will you find Jacksonville Sheriffs Office listed as a defendant until Case No. 99-00656-CV-J-21. In addition, the cause of action is not the same. A Copy of the Petition filed by Plaintiff on July 22, 1994 is included as Exhibit No. 6. It involves Constitutional Amendment 14, Sec.(1), Note 4407, regarding negotiable instruments. The present cause of action involves Constitutional Amendment 14, Note 3, Para.3 "Right of individual or corporation not to be deprived of property without due process" and Title 28 **U.S.C.** 1343(a)(3), and introducing the City of Jacksonville, Jacksonville Sheriffs Office as the 'state actor' and defendant in accordance with Title 42, U.S.C. 1983. See Fuliman vs. Graddick, 739 F. 2d *553* (1984).

Plaintiff denies the satisfaction of the third and fourth elements of claim preclusion.

The Court's opinion has failed to address the issue of Plaintiffs Motion for Default Judgment and Defendants' failure to answer this complaint timely as stated in Appellant's brief filed June 11, 2001 (record on appeal), Page 6, Issue No. 1 and Page 10, Issue No. 1. (Federal Rules of Civil Pr

**APPENDIX S(1)**

3025 Armstrong Street
Jacksonville, Florida 32218
October 9, 1991.

Federal Bureau of Investigation
7820 Arlington Expressway
Jacksonville, Florida 32211

Attention: Mike Collins

After my conversation with you on October 7, 1991, I realized that your office has never received copies of petitions, letters and replies showing the series of events leading up to my request for your assistance.

Perhaps if this is forwarded to the proper persons, theywill be able to assist me. At your suggestion, I contacted the State's Attorney. He would not assist me. The Comptroller of the Currency will not assist me. I cannot obtain redress in the courts.

The fact that a bank is supposed to be "Caesar's Wife" seems to color the response to my claim. Everyone wants to believe that a bank cannot or would not make a mistake, or try to conceal facts, or be less than perfect. They refuse to concede that a bank employee or official is subject to the same pressures and fears that we all are.... fear of losing a job or salary, fear of not being able to work in your chosen field. If they are responsible for that bank having to pay large sums of money for the errors they make, rest assured they will not last long in their jobs nor will they be able to secure a position with another bank.

Their exalted positions gone, their huge salaries gone, . . . Banker to street sweeper in one stroke! Wouldn't they do almost anything to prevent this? Wouldn't the small lies and cover—ups escalate as I continue my protest of their treatment?

By conceding their own vulnerability, they destroy the illusion of their perfection. No one wants to doubt them, even when the evidence is clear. Attorneys have been negligent in this matter as have the courts. No one wants to uncover the cover—up. They protect each other better than presidents and their staffs.

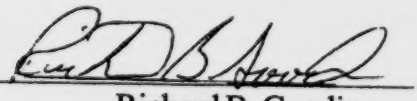
I never wanted to make a spectacle of this nor destroy the reputation of a bank. All I wanted was restoration of my losses and reputation.

Rape is a crime.., financial rape is as horrendous as physical rape. It is possible for the rich and powerful to be criminal.

I am enclosing copies of my petitions in County, Circuit and Federal Courts, affidavit by a document forensic expert, Don Quinn, and my letter to the State's Attorney and his reply.

Please read these petitions bearing in mind thatl have in my possession the cancelled check negotiated by the bank; the same check they and the courts refuse to acknowledge as even existing.

Yours truly,

s/ 

Richard B. Goodin

**APPENDIX S(2)**

**U.S. Department of Justice**
**Federal Bureau of Investigation**

January 23, 1992

Post Office Box 8928
Jacksonville, FL 32239
**In Reply, Please Refer to**
**File No.**

Mr. Richard B. Goodin
3025 Armstrong Street
Jacksonville, Florida 32218

Dear Mr. Goodin:

Our office has reviewed the information you provided telephonically on May 29, 1991, and the documents you furnished with your letter of October 9, 1991. Our review has determined that the information does not constitute a federal violation within our investigative jurisdiction, therefore, our office is conducting no investigation at this time.

Sincerely,
Joseph V. Corless
Special Agent in Charge

s/ Linda L. Reel

By: Linda L. Reel
Supervisory Special Agent

**APPENDIX T**

STATE ATTORNEY

FOURTH JUDICIAL CIRCUIT OF FLORIDA

July 12, 1991

HARRY L. SHORSTEIN
STATE ATTORNEY
DUVAL COUNTY COURTHOUSE
JACKSONVILLE, FLORIDA 32202-2982
TEL: (904) 630-2400
FAX (904) 630-1848

Mr. Richard B. Goodin
3025 Armstrong Street
Jacksonville, Florida 32218

Dear Mr. Goodin:

I have reviewed your correspondence of June 16, 1991, with its enclosures. I regret that you have suffered through long civil court battles. Nevertheless, there is no action that I deem appropriate to be taken by my office at this time.

Very truly yours,

s/ Harry L. Shorstein
Harry L. Shorstein

HLS: cm

**APPENDIX U** AFFIDAVIT

STATE OF FLORIDA
COUNTY OF DUVAL

Before me, the undersigned authority, personally appeared DON O. QUINN, who, being by me first duly sworn, deposes and states:

1. That I am an expert in the area of Questioned Document Examinations.

2. I am qualified to testify to matters stated herein due to my professional training in the forensic field of Questioned Document Examination. I completed a two year resident training and study program at the United States Army Criminal Investigation Laboratory, Fort Gordon, Georgia between the years 1964 and 1966. This program included reading and studying books written by recognized professionals in the forensic field of Questioned Document Examination; a study of various handwriting systems; a study of general and specific characteristics; and studies the chemical processes and photographic techniques used in the examination of erased, altered, obliterated, burned, and charred documents. I have continued my training in order to remain abreast of the field and have studied with the FBI Training Academy in Quantico, Virginia and the Institute of Paper Chemistry in Appleton, Wisconsin. I also earned a Bachelor of Science Degree in Criminal Justice from East Tennessee State University, Johnson City, Tennessee.

3. I am a member of the Southeastern Association of Forensic Document Examiners, the Southern Association of Forensic Scientists and the International Association for Identification.

4. At the request of Mr. Richard B. Goodin, I have examined the following documents:

Item 1 Goodin & Son Seafood check number 146, drawn on Flagship Bank of Jacksonville, Account Number 063000704 788 8724211, dated Jan. 5, 83, made payable to Kirby Smith Junior High School, in the amount of $10.00.

Item 2 Goodin & Son Seafood check number 149, drawn on Flagship Bank of Jacksonville, Account Number 063000704 788 8724211, dated 1—10-83, made payable to Robert L. Tuttle, Inc., in the amount of $400.00.

Item 3 Goodin & Son Seafood checks drawn on Flagship Bank of Jacksonville, Account Number 063000704 788 8724211, described as follows:

| Item # | Check # | Dated | Pay To | Amount |
|---|---|---|---|---|
| 3(1) | 476 | 8—30—84 | Cash | $20.00 |
| 3(2) | 482 | 8—29—84 | Cash | 25.00 |
| 3(3) | 513 | 9—25—84 | Cash | 20.00 |
| 3(4) | 515 | 9—28—84 | Cash | 20.00 |

5. I examined these documents for the following purposes:

A. To determine whether the stamp imprints appearing on the reverses of Item 1 and Item 2 indicate they were paid by Flagship Bank of Jacksonville.

B. To determine whether the stamp imprints appearing on the reverses of Item 3(1—4) indicate they were paid by Sun Bank N A., Orlando, Florida.

6. My examinations resulted in the following findings:.

A. The stamp imprints on the face of Item 1 indicate check number 146 was processed as a non sufficient fund instrument.

B. The stamp imprints on the reverse of Item 2 indicate check number 149 was processed as a valid instrument by the PAY ANY BANK PEG FLAGSHIP OPERATIONS JACKSONVILLE JACKSONVILLE, FLA 63—70 stamp impression.

C The stamp imprints on the reverses of Item 3(1—4) indicate check numbers 476, 482, 513 and 515 were processed as valid instruments by the SUN BANK N.A ORLANDO, FL PAY ANY BANK 063102152 stamp impressions.

FURTHER AFFIANT SAITH NOT.

s/ Don O. Quinn
Don O. Quinn

Sworn to and subscribe before me
this 21st day of January 1991.

s/ Patricia H. Pickett
My Commission Expires:
Notary Public, State of Florida
My Comm. Exp. Dec. 9 1994
Bondeo thru PICHARD Inc. Agency

STATE OF FLORIDA
DUVAL COUNTY
I, UNDERSIGNED Clerk of the Circuit & County Courts, Duval County, Florida, DO HEREBY CERTIFY the within and foregoing is a true and correct copy of the original as it appears on record and file in the office of the Clerk of Circuit & County Courts of Duval County, Florida.
WITNESS my hand and seal of Clerk of Circuit & County Courts at Jacksonville Florida, this the 20th day of March A.D., 1992
HENRY W. COOK
Clerk, Circuit and County Courts
Duval County, Florida
By Kay Glorion
Deputy Clerk

**APPENDIX V**

Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

December 5, 1989

Mr. Richard B. Goodin
3025 Armstrong Avenue
Jacksonville, Florida 32218

Dear Mr. Goodin:

This is in response to your complaint coi~cerning Sun Bank/North Florida, N.A., Jacksonville, Florida. You have an ongoing dispute with the bank regarding a sequence of issues which have been the subject of litigation in the County Court for Duval County, Florida, the Circuit Court, Fourth Judicial Circuit, in and for Duval Coun'ty, Florida, and the District Court of Appeal, First District, Tallahassee, Florida. You state you are now pursuing this matter in Fedeial Courc.. You believe "subject matter jurisdiction" is required in order for your case to be heard. You also indicate that you believe the matter of "concealment of evidence" by bank employees comes within this Office's jurisdiction as regulator of national banks. You originally filed this complaint with our Southeastern District Office wherein you asked the district office to address the matter of concealment of evidence by bank employees concerning the matter presented in the Circuit Court. Your appeal of the district office's determination has keen forwarded to this Office for further review.

This Office has reviewed your complaint file, including additional correspondence which you forwarded to this Office. The matters of concern to you ~not come within this Office's jurisdiction as authorized by Congress. The Office of the Comptroller of the Currency (0CC) is an administrative government agency, and is responsible for the supervision and regulation of national banks to ensure their compliance with federal banking statutes and regulations within the agency's jurisdiction. The Office also attempts to resolve individual consumer complaints which involve the Consumer Credit Protection Act as well as regulations which implemented the Act and other consumer protection statutes. In the absence of bank violations involving these laws and regulations, the 0CC has no authority to direct banks to take corrective actions or to satisfy the requests of consumers. Further, the 0CC is not authorized by Congress to adjudicate factual disputes, advocate the cause of individual disputes between a hank and its customers, nor intervene in matters which are or have been the subject of litigation, or those pending litigation.

The matters of concern to you involve a factual dispute and rightfully have been addressed by the judicial branch of our government. Any further pursuit of this dispute, including your concerns regarding concealment of evidence, must also be addressed by a court of proper ~risdiction. This Office can be of no further assistance in this matter.

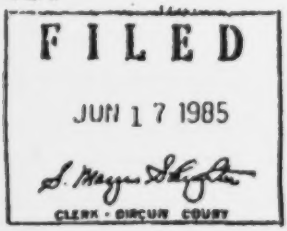
Sincerely,

s/ _____

Senior Lending Specialist
Consumer Activities Division

**APPENDIX W**

IN THE COUNTY COURT
DUVAL COUNTY, FLORIDA
CASE NO.: 84-2137 SP
DIVISION J




ROBERT L. TUGGLE, INC.
a Florida corporation
Plaintiff

vs.

RICHARD GOODIN
Defendant

NOTICE OF FILING

Defandant Richard B. Goodin hereby gives notice of filing of attached in this case in support of relief.

Dated this 17th day of June 1985.

s/ Richard B. Goodin

From The Desk Of
GLENDA W. CRISP

October 10, 1984

Mr. Richard D. Goodin
5913 Tampico Road
Jacksonville, Florida 32210

Although I do not recall the date, I remember receiving documents in connection

with your case. Since I did not know why we should have received them I placed them on Judge Fay's desk thinkin he would be familiar with the case. As soon as you called to let me know they had been sent to us in error by Mr. Penland's office I sent the papers to Judge Walker's office as you requested.I am sorry that I kept no record or transmittal letter. I only attched a handwritten note to Dee that the documents had been sent to us by mistake.

If I can be of further help let know.

Very truly yours

s/ Glenda W. Crisp
Secretary to Judge Fay.

**APPENDIX X**

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

Case No.: 85-13875-CA
Division: H

RICHARD GOODIN, Plaintiff,
V.
SUN BANK/NORTH FLORIDA, NATIONAL ASSOCIATION, f/k/a FLAGSHIP BANK, Defendant.

MOTION FOR RELIEF FROM JUDGMENT

COMES NOW the Plaintiff, by and through his undersigned attorney, and pursuant to Rule 1.540(b)(2), moves this Court to grant him relief from the Final Judgment previously entered on the grounds of newly discovered evidence, to wit: the original check number 149, the subject of this litigation, and in support thereof, says:

1. That check number 149 was a crucial and pivotal point of evidence in this trial and, in particular, the writing, stamps, marks, etc. contained on the reverse side of said check were crucial points of evidence in dispute in this trial.

2. At the time this trial was held, Plaintiff had made a diligent and exhaustive effort to locate the original check and had been unable to do so. Therefore, trial was held upon the copies of the check in question produced by the Defendant, said copies not being clearly legible.

3. The exact dates and stamps contained on the check in question were crucial items disputed in this trial, and were not able to be ascertained with any reasonable certainty.

4. Subsequent to the trial in this cause, Plaintiff, while looking for other items unrelated to this cause, discovered the original check number 149, which had been misplaced with other items unrelated to this cause. Said check clearly reveals the markings, dates and stamps affixed to said check, resolving all uncertainties concerning said markings, dates, and stamps.

4. The above newly discovered evidence, if presented to a jury, would clearly demonstrate that the jury's verdict should be in favor of the Plaintiff.

5. Said newly discovered evidence is sufficient grounds for this Court to order a new trial of the above styled cause.

WHEREFORE, Plaintiff prays this Court to grant him relief from the Final Judgment previously entered, said relief requested being a new trial.

s/ _____
RAYMOND W. WILLIAMS
Attorney for Plaintiff
4981 Atlantic Boulevard
Jacksonville, Florida 32207
904 398—3437

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to Mr. Calvin E. Hayden, Attorney for Defendant, 2401 Independent Square, Post Office Box 53075, Jacksonville, Florida 32201—3075, BY ND DELIVERY, this 14th day of August, 1986.

s/ _____
RAYMOND W. WILLIAMS
Attorney for Plaintiff

**APPENDIX Y**

IN THE COUNTY COURT
DUVAL COUNTY, FLORIDA
CASE NO. 84-2137-SP
DIVISION: J

ROBERT L. TUGGLE, INC.
a Florida corporation Plaintiff
vs.
RICHARD GOODIN, Defendant

MOTION FOR RELIEF FROM FINAL JUDGMENT

The defendant, RICHARD GOODIN, by and through his undersigned attorneys, moves the Court to grant relief from the final judgment previously entered herein and to set aside and vacate said judgment and would show the Court that the judgment was entered based on mistake of the parties and the Court in construing the evidence concerning the status of payments of rent for the leased premises, newly discovered evidence consisting of bank records which could not have been discovered in time to move for a new trial or rehearing and misrepresentation of the plaintiff as to the status of the rental payments, together with the plaintiff's misconduct in conspiring and agreeing with a third party for the rental of the premises prior to any alleged default in the rental.

WHEREFORE, for the foregoing reasons, the defendant RICHARD GOODIN, would request that the Court set aside and vacate the final judgment of eviction herein.

LIPTAK & DAVIS, P.A.

s/ _____

Marshal W. Liptak, Esq.
1058 Atlantic Bank Bldg. • Jacksonville, FL 32202
904/354-2738 • Attorneys for Defendant

**APPENDIX Z**

IN THE COUNTY COURT
DUVAL COUNTY FLORIDA
IN REFERENCE TO:
CASE NO. 84-2137-SP
DIVISION: J

ROBERT L. TUGGLE, INC.
a Florida corporation Plaintiff

RICHARD B. GOODIN, Defendant

PETITION FOR JUDICIAL ACTION

1. On March 7, 1.9811, at 10:22 A .M., Notice of Default was served on the business known as RICK GOODIN & SON, SEAFOOD & PRODUCE, alleging failure to pay $400.00 rent on the property located at. 6317 Norwood Avenue, Jacksonville, Florida 32208 (Duval County), within the five (5) day grace period from March 1, 1984. This Notice of Default was given to Mrs. Richard Good— in, Sr. by Steve Lucas, President of ROBERT L. TOGGLE, INC., who told her lie would be back after 2:00 P.M. with new locks for the doors.
   A. In the past;, Mr. Lucas would always call or leave messages with my mother if I fell behind in the rent, so I was very much surprised at this premature legal action. I called Mr. Lucas to explain that my rent was not past due; that indeed, it was paid in advance, however, he remarked that "he wanted me out and it was his right; under the terms of the lease. " He also told me he had someone else who wanted to lease the property for a higher rent. I told him this was not ethical, but he so 1 0 "That's business
   B. In my own mind, I was certain that I was current in my rent payment, however, because I did not have time to

research my records for proof of this, I delivered $400 in cash to Marian Kinley, the bookkeeper at R. L. Tuggle, Inc.

2. A Complaint in the above case was filed March 20, 1984. Upon receiving notice of this complaint, I retained Perry Penland, Jr. to prepare my defense in this action. The complaint was that I failed to make rent payments on a timely basis, thus abrogating my lease agreement.

3. On March 26, 19811, Perry Penland, Jr. filed a Motion to Dismiss stating that:
   (a) Defendant denies being in default.
   (b) Steve Lucas told defendant that he already had a new tenant waiting to lease the property at a higher rate, therefore, he wanted the defendant to give up the property.
   (c) On the very day of the declared default (March 7, 1984) Plaintiff accepted payment of $400.00 in full to cure the alleged default.

   A. Entered as evidence in this motion:
      (a) For the Plaintiff: Lease agreement and oral testimony. (b) For the Defendant: Postal Money Order Receipt dated March 7, 1984, Number 32026505131 in the amount of $400.00 and oral testimony.

   B. Motion to Dismiss was denied on April 24, 1984. I understand that the denial was based on a Florida Statute which states that a business need not be notified in advance of a landlord's intention to file Notice of Default.. Trial was then set for May 2, 1984.

4. During the May 2, 1984 trial, Plaintiff entered as evidence, his receipt book covering the period from

March 20, 1982 through February 15, 1984, his ledger card for my account, and a copy of the lease. Defendant entered as evidence a Postal Money Order Receipt Number 32036505131 dated March 7, 1984 for $400.00 which had been paid to the bookkeeper at Robert L. Tuggle, Inc..

A. Attorney for the Plaintiff, Julian Pinkston, gave Judge Walker the receipt book, whereupon, after a cursory examination, Judge Walker handed the receipt book to the Defense Attorney, Perry Penland, Jr. who gave it to the defendant. She asked if these were the rent receipts; I replied, "Yes, they are." She then ordered Perry Penland, Jr. to make copies of those receipts which pertained to this case and return them to her. So ended the trial.

B. I was notified by letter from Perry Penland, Jr. dated May 23, 1984 that Final Judgement was made on May 11, 1984 in the Plaintiff's behalf and so ordered and filed on May 22, 1984.

5. On May 24, 1984, a Writ of Possession was filed, ordering the return of the premises to Robert L. Tuggle, md.

A. It is my understanding that there is a ten (10) day waiting period before a writ may be executed (June 2, 1984) unless execution is so ordered by the judge (see Florida Rules of Court 1.550.) Judge Walker confirms that she did not order such execution, however, on May 30, 1984 Officers of the Jacksonville Sheriff's Department appeared at my place of business with laborers to remove my property from the premises. The officers ordered me off the property and the laborers proceeded to carry out all my equipment and personal effects and place them on the grass verge between the sidewalk and the street.

B. I went to my brother's business nearby and called Perry Penland, Jr. and Judge Walker. Mr. Penland was unavailable, however, Judge Walker told me at that time, she had not ordered execution of the writ and that the Sheriff's Department was acting on it's own. My brother went to my business location and took what books and records he could find and brought them to his shop.

6. I could not reach Perry Penland, Jr. and my brother referred me to his attorney, Daniel McCranie, who agreed to assist me in this matter. Mr. McCranie conferred with Mr. Penland and Mr. Penland then filed a Motion for Relief from Final Judgement based on Rule 1.540(b) on June 11, 19811.
   A. The motion refers to money accepted by Steve Lucas in payment of the alleged default of March, 1984 rent; and for payment made for the following month of April, 1984, which had been duly tendered and accepted as a matter of law, but which were held and then "conveniently" returned to me after the eviction took place.
   B. It also refers to the "third party" who rented the premises, and to the very costly equipment and improvements made by the defendant to the plaintiff's property.

7. Hearing on the motion was set for July 12, 1984.

8. Amended Notice of Hearing: Hearing postponed until August 8, 1984.
   A In the interim between June 11, 1984 and July 16, 1984, a deposition was taken from Ernie Swain, the present lessee of the premises from which I was evicted, and who is now discovered to be the "third party" referred to in the Motion to Dismiss. A Sub

poena for Deposition was refused by Steve Lucas under a Motion for Protective Order.

9. Results of hearing of August 8, 1988: Motion denied.
   A. I was informed on August 13, 1984 of the denial.
   B. At this point in Lime I was angry and frustrated. I could not believe, with all the evidence of payments received and accepted, and the fact that the receipts showed I was not in arrears in my rent, that all my motions were being denied. I went to Perry Penland, Jr.'s office and requested my files. I also told him to send the money orders to the court. (He forwarded them to me by mail two days later.) lie had a letter typed releasing himself from responsibility in my case. I told him to change the wording to read "further responsibility, but not absolving himself from liability prior to August 13, 1984". In my confusion and frustration, I signed the letter and left. His copy and mine are not the same.
   C. After leaving Penland's office, I went to the courthouse to obtain proof that Ernie Swain had transferred his occupational license to the premises I was leasing even before I had been notified Led of the alleged default The transfer date on his occupational license is March 6, 1988. I was served the Notice of Default on March 7, 1988. You will recall that Steve Lucas testified at the original Motion to Dismiss hear— log on April 17, 1988 that he had no one prepared to lease the premises. In fact, he had already committed himself to rent the property to Ernie Swain so far as to cause Mr. Swain to secure an occupational license for the property. I ask now, "Was Judge Walker aware of this?" I think not.
   D. Proceeding further through my file, I discovered a letter dated May 3, 1988 addressed to Judge Lawrence Fay from Perry Penland, Jr. referring to the defendant's

exhibits entered at trial on May 2, 1984, which were the rent receipts ordered by Judge Walker. Apparently, my evidence was sent to the wrong judge 1 ask now, "Did Judge Walker have the opportunity to review my evidence before denying my motion?" I think not. Those receipts show payments in excess of that which Stove Lucas testified to in court.

E. I believe that if Judge Walker had been aware of the factual existence of the "third party lessee" and had had the rent receipts, her decision in my Motion to Dismiss and in my Motion for Relief from Final Judgement would have been far different from that which was rendered.

10. Because of the loss of my assets, business and life savings, and the costly attorney fees, I found myself in the position of being unable to afford further legal service at this time. On August 15, 1984, I submitted a Notice of Filing on the evidence misdirected to Judge Pay. On September 25, 1984, I filed a Motion to Dismiss. On November 5, 1984, Judge Walker filed a Court's Motion for Hearing set for November 26, 1984.

A Before the hearing, I was able to secure the services of Marshall Liptak, Attorney.

B On December 13, 1984, Plaintiff's attorney, Julian Pinks ton stated in a letter to Marshall Liptak, that his client's re— cords agree with the defendant's evidence except for a payment received on January 10, 1983, which was a cheek returned for insufficient funds, which we will express as NSF when referring to such returned items. Marshall Liptak's response was a letter to Judge Walker in which he states that "he sees no documentary basis for altering the outcome of the case or seeking further relief at this time on the behalf of the defendant."

C On February 11, 1985, I filed a research request with the Sun Bank f/k/a Flagship Bank of Jacksonville for a copy of the alleged NSF cheek #149 Receiving no response, I contacted the Sun Bank in Orlando, who forwarded a copy of the cheek to their Water Street Branch where I picked it up. There was no indication on the copy of the check that it had ever been returned NSF. With this new evidence, Marshall Liptak filed a Request for Production of Documents with the court on "arch 18, 1985.

11 Marshall Liptak requested information regarding Check #149 from the Sun Bank/ North Florida, National Association oh March 25, 1985 and again on May 10, 1985. The reply received from any Mayo, Sun Bank Vice President and Cashier, states that Check #149 was returned NSF and charged back to Robert L. Tuggle, Inc. and the check was mailed to them at their address. This is in direct conflict with the evidence of the check. The Uniform Commercial Code states that a returned check must be marked NSF on the face and PNB (pay no bank) on the back. There is no evidence of these markings on the copy of the check. In fact, I picked up the check at the bank myself in return for a payment of $400.00 in cash to a clerk at the South Branch of the Flagship Bank. Based on these facts, a Motion for Relief from Final Judgement was filed on May 13,1985.

A. The motion refers to a judgement rendered based on a mistake of the parties and the court in construing the evidence concerning the status of the lease payments, newly discovered evidence, misrepresentation of the Plaintiff as to the status of the lease account, and the Plaintiff's misconduct in conspiring with a "third party" for rental of the property prior to any alleged default in the rental.

12. The letter I received from my attorney, Marshall Liptak, told me to find the bank clerk to whom I gave the cash for the Check #149, and get her to admit she returned my check to me. He told me I would have to sue the bank and it would cost me another $3,000.00 to begin proceedings. I got the impression that he was no longer committed to my case and decided to proceed on my own.

13. I submitted a Notice of Filing to the court on June 14, 1985, introducing three (3) copies of checks I had paid for rental. Two of these checks were clearly marked NSF, but Check #149 has no such markings.

14. On June 17, 1985 I submitted another Notice of Filing with regard to an October 10, 1984 memo from Glenda V .Crisp, Secretary to Judge Lawrence Fay, indicating that she had indeed received documents in connection with my case and had forwarded them to Judge Walker when I inquired about them.

15. On June 25, 1985, I obtained a copy of the deposition taken trait Ernie Swain. On June 28, 1985, I submitted this deposition to Judge Walker.

    A In the deposition, Ernie Swain admits to conversations with Steve Lucas regarding the rental of the property in question. He also admits transferring his occupational license to this same property even before I was notified of any action pending against me. The rest of his testimony is garbled and suffers from severe memory loss with regard to dates and other pertinent facts.

16 There was no deposition by Steve Lucas since he filed a Motion for Protective Order on August 2, 1984. In his motion, he claims he would be "subjected to undue burden and expense by the defendant seeking new information for a

17. On June 28, 1985, a Notice of Filing was filed. It states it was filed at the direction of deposing counsel, however, it was actually filed at the direction of the defendant.

18. On July 16, 1985, Julian Pinkston, Attorney of the Plaintiff, filed a Motion for Attorney's Fees.
    A lie claims that this case has been settled officially and all subsequent attempts by the defendant were uncalled for.
    B. To date, no ruling on his motion has been made nor have any attorney fees been awarded.

19. On July 22, 1985, a hearing was held on my Motion for Relief from Final .Judgement tiled May 13, 1985 and amended July 9, 1985.
    A. Marshall Liptak sent his associate, Marshall Davis to request a withdrawal from the case. I had no objection and it was so ordered by Judge Walker.
    B. Judge Walker allowed me to continue on my own behalf. I referred to the copies of Check #149 and others as were included in my June 14, 1985 Notice of Filing showing that the check had cleared. Judge Walker, finding the endorsements missing from the file, ordered a continuance until September 3, 1985 in order to secure a copy of the back of the check and to allow me time to obtain counsel.

20. On August 23, 1985, Raymond Williams filed a Notice of Appearance as Attorney of Record for the Defendant.

21. On August 23, 1985, Raymond Williams filed A Supplementary Motion for Relief from Final Judgment.
    A. Supplementary motion was based on the evidence of the rent receipts which were sent to Judge fly in

error and the newly discovered evidence of Check #149 to refute Plaintiff's contention that the returned check caused the default status of the defendant's rental account( a point which was not even brought out in the original Notice of Default hearing.

B. A Motion to File a Counter-claim for wrongful eviction was included in the supplement.

22 At the September 3, 1985 hearing, the following evidence was introduced by the Plaintiff:

(a) The bank statement of Robert L. Tuggle, Inc. for January, 1983.

(b) A Charge Advice slip from Flagship Bank dated January 12, 1983 indicating a return item for $400.00 from Goodin & Son Seafood.

(c) Affidavit from Rosemary Markham, current book-keeper for Robert L. Tuggle, Inc.

Evidence submitted by the Defendant was as follows:

(d) Copy of original Check #149 as furnished by Sun Bank Data Center in Orlando, Florida.

(e) Copies of rent receipts obtained from Judge Fay.

A. The outcome of the hearing is contained in the order by Judge Walker filed September 17, 1985 in which she states that because the bank does not acknowledge receiving the $400.00 from the defendant and did so charge this amount back to the Plaintiff's account (for Check #149 which I contend was in my possession) defendant s motion was denied.

I hereby certify that a copy of the foregoing was
furnished to Julian S. Pinkston
_____ (Plaintiff/Attorney)
by Hand Delivery
This 1 day of Sept 19 88
Linda B Sweet

s/ Richard B. Goodin

Richard B. Goodin, Petitioner
804 Calvert Street
Jacksonville, Florida 32208
(904) 764-2315 or 764-6434

In summation, I wish to restate the points I feel have not been given sufficient consideration in this case:

A. The deposition of Ernie Swain and copy of his Occupational license dated March 6, 1984 which prove Steve Lucas lied in court under oath. He stated he had no prospective lessee, when, in fact, he had already promised the property to Ernie Swain before even giving me notice of default. The fact that Lucas deviated from all previous practice of notifying me of a late payment and took immediate legal action for a supposed two day late payment.

B. The evidence of the rent receipts sent to the wrong Judge which proved I was not in arrears. Note the sudden introduction of the alleged returned Check #149 after the rent receipts show my current status.

C. The fact that my March payment was accepted, as was another for April. Why didn't Lucas refuse these payments if he was proceeding with eviction. Instead, he kept them until after the eviction thus causing me to continue improving the property in the belief that we had resolved the problem of the rent and that I would continue in business at this location.

D. The fact that the eviction took place before the ten day grace period as proscribed by law expired, and was not so ordered by the judge, thus denying me due process of law.

E. The fact that Sun Bank has a security interest in this property as evidenced by a Mortgage and Stock Pledge Agreement between Steve Lucas and the Sun Bank dated June 7, 1984, copy of which is attached.

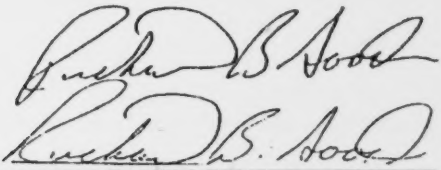
F. The fact of check #149 not marked NSF on the face or PNB (pay no bank) on the back. The check is stamped "Paid" and my notice from the bank reads "check #149 was paid thus creating an overdraft in my account". The fact that check #146 for $400.00 was returned is proof of this overdraft. If #149 had actually been returned, there would still have been sufficient funds to pay #146, but this was not so.

I appreciate the attention you are giving my case, and I would be glad to discuss it with you at your convenience

You can compare check #149 with the copies presented at trial and understand why tie hank's testimony was so convincing. The copies testified to were illegible, therefore the jury accepted the bank officers' words as to what should have been stamped on the back of the check. They were "snowed under" by complicated jargon and unnecessary witnesses who were introduced just to impress

I understand that if my petition is successful, I would be granted relief from my losses. I ask that I be awarded what is right and suitable under the law: that I be "made whole" and restored to

such position as I would have attained had I not been evicted from the premises and allowed to continue building my business; that I be vindicated in the eyes of these who saw me humiliated in the area where I grew up and where I bed conducted my business for over six years; that I be restituted for the suffering and expense of pursuing a just cause; and that I not be persecuted by those who may resent my raising issues which may prove detrimental to those who victimized me.



s/ _____

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